



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Planning Commission Report

HEARING DATE: MARCH 20, 2014

*Report Name:* **Evaluating the Planning Code's Medical Cannabis Dispensaries  
Locational Requirements**

*Case No.:* 2013.1255U

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*Recommendation:* **Adopt Report and Forward to the Board of Supervisors**

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### STATEMENT OF PURPOSE

This report was prepared in response to an Ordinance (BF 130734), introduced by Supervisor Avalos on July 16, 2013 and passed into law on November 27, 2013, which directs the Planning Commission to prepare and submit a report to the Board of Supervisors evaluating the provisions of the Planning Code related to the location of medical cannabis dispensaries (hereinafter MCDs). This is a draft report prepared for the Planning Commission which, if approved, will be transmitted to the Board of Supervisors.

This report will provide a summary of the medical cannabis<sup>1</sup> laws in San Francisco as well as at the state and at the federal level, it will summarize existing controls for MCDs, and recommend changes to existing regulations. It will also address the specific questions posed in the Ordinance, which include:

1. The extent to which MCDs are concentrated in particular communities within San Francisco;
2. The nature and extent of effects of the location requirements for MCDs on medical cannabis patients' access to medical cannabis;
3. The nature and extent of effects of the location requirements for MCDs on the public health, safety and welfare in the communities in which MCDs are located;
4. Whether increased community input into the approval process to establish an MCD would benefit the public health, safety and welfare, and, if so, what procedures would be most effective in increasing such community input;
5. Projected impacts on the public health, safety and welfare of expanding the areas in which MCDs can be located; and

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<sup>1</sup> For consistency, the term cannabis is used instead of "marijuana" or "pot" throughout this report, except when referring to specific laws or titles.

6. Best operational practices that should be employed by MCDs to ensure the public health, safety and welfare, including but not limited to minimum levels of security measures, hours of operation, and location.

In preparing this report, the Department staff consulted with representatives of the medical cannabis community, including dispensary owners, advocates and patients; staff at the Department of Public Health (hereinafter, "DPH"), Police Department (hereinafter, "SFPD"), the San Francisco Unified School District (hereinafter SFUSD) and City Attorney's Office; and neighbors of MCDs. In addition to attending an Axis of Love working group meeting on December 15, 2013 where several MCD owners and members of the MCD community provided input on the content of this report (see Exhibit D), the following individuals were also consulted:

**City Staff.** Ryan Clausnitzer, *Department of Public Health, MCD Division*; Sgt. Ely Turner, *SFPD Permit Officer, Ingleside Station*; Vicky Wong, *Deputy City Attorney*; Captain Hector Sainez, *SFPD*; Chris Armentrout, *SFUSD*; Valley Brown, *former neighborhood advocate (current Board Aide)*;

**MCD Community.** David Owen, *MCD Advocate*; Stephanie Tucker, *MCD Advocate*; Kevin Reed, *Owner, The Green Cross*; Ryan Hudson, *Owner, The Apothecarium*; Patrick Goggin, *Attorney At Law, Mediator*; Shone Gochenaur, *Executive Director, Axis of Love SF*

**Neighbors.** Pat Tura, *Duboce Triangle Neighborhood Association*; Terry Bennett, *President, Merchants of Upper Market and Castro*; Joelle Kenealey, *President, Outer Mission Merchants and Residents Association*; Barbara Fugate, *Cayuga Improvement Association*; Linda D'Avirro, *Excelsior Neighborhood Association*; Laurie Heath, *Neighbor of an MCD*; Dan Weaver, *Executive Director, Ocean Avenue Association*

## BACKGROUND

### Medical Cannabis in California

**Proposition 215.** In 1996, California voters passed Proposition 215, known as the Compassionate Use Act, by a 56% majority making California the first state in the union to allow for the medical use of cannabis. In San Francisco, Proposition 215 passed by a 78% majority. Prop 215 established the right of seriously ill Californians<sup>2</sup> to obtain and use cannabis for medical purposes when recommended by a physician.

Prop 215 removed state-level criminal penalties on the use, possession and cultivation of cannabis by patients who possess a written or oral recommendation from their physician that he or she would benefit from medical cannabis. Patients diagnosed with any debilitating illness where the medical use of cannabis has been deemed appropriate and has been recommended by a physician are afforded legal protection under this act. The bill did not set limits on the amount of medical cannabis a patient could possess at any one time; it was silent on medical cannabis

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<sup>2</sup> Conditions typically covered by the law include, but are not limited to, arthritis; cachexia; cancer; chronic pain; HIV or AIDS; epilepsy; migraine; and multiple sclerosis.

dispensaries; and it did not set any land use controls governing the sale or distribution of medical cannabis.

**Senate Bill 420.** Senate Bill 420, which took effect on January 1, 2004, imposes statewide guidelines outlining how much medicinal cannabis patients may grow and possess. Under the guidelines, qualified patients or their primary caregivers may possess no more than eight ounces of dried cannabis or six mature (or 12 immature) cannabis plants. The legislation also allows counties and municipalities to approve and maintain local ordinances permitting patients to possess larger quantities of medicinal cannabis than allowed under the new state guidelines<sup>3</sup>.

Senate Bill 420 also grants implied legal protection to the state's medicinal cannabis dispensaries, stating, "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients ... who associate within the state of California in order collectively or cooperatively to cultivate cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions."

While Senate Bill 420 did not establish any land use controls limiting where dispensaries could be located, it did establish certain limitations on where medical cannabis could be smoked. These include:

- (a) In any place where smoking is prohibited by law.
- (b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence
- (c) On a school bus.
- (d) While in a motor vehicle that is being operated.
- (e) While operating a boat.

Finally, the bill also required the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients. Counties are required to participate in the identification card program by providing applications upon request, process completed applications, issue ID Cards, and maintain certain records. For patients, however the process is voluntary. The California Department of Public Health reports that during the fiscal year that ended last June, the state had only 9,637 valid card holders<sup>4</sup>.

**State Attorney General Guidelines.** SB 420 authorizes the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations. The bill also authorize(s) the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill requires the Attorney General to develop and adopt guidelines to ensure the security and non-diversion of cannabis grown for medical use. The State's Attorney

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<sup>3</sup> Section 3302 of the San Francisco Health Code allows patients to have 8 ounces of dried cannabis and up to 24 cannabis plants per qualified patient or up to 25 square feet of total garden canopy measured by the combined vegetative growth area. However, if a qualified patient has a doctor's recommendation that this quantity does not meet the patient's medical needs, the patient may possess an amount of cannabis consistent with the patient's needs.

<sup>4</sup> Leff, Lisa. "How Many Pot Patients California Has Is Anyone's Guess." Salon.com, March 24, 2012. Web. December 11, 2013.

General issued these guidelines in a 2008 memo title “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use.” The memo mostly clarifies existing state law.

**Assembly Bill 2650.** AB 2650, which took effect on Jan 1, 2011, prohibits medical cannabis collectives from operating within 600 feet (as a crow flies) of a school. This bill defined a school as any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive. It covers all activities by dispensaries or other providers that have a storefront location or mobile outlet and are required to have a business license. The bill grandfathered dispensaries that are currently allowed to operate there under existing local regulations. The bill specifically stated that cities and counties were still able to adopt ordinances or policies that further restrict the location or establishment of medical cannabis dispensaries.

### Medical Cannabis in San Francisco

MCDs started to establish in San Francisco shortly after Proposition 215 passed in order to provide safe access to medical cannabis for those suffering from debilitating illnesses. At that time, San Francisco did not have any regulatory controls in place to restrict the placement and operations of the dispensaries. As a result, over 40 dispensaries were established in the city without any land use controls, often resulting in incompatible uses next to each other.

**Medical Cannabis Act.** San Francisco’s law covering medical cannabis, the Medical Cannabis Act (hereinafter MCA), became effective on December 30, 2005. The Act, set forth in Ordinance 275-05 and supported by Ordinances 271-05 and 273-05, amended the Planning, Health, Traffic, and Business and Tax Regulation Codes in order to establish a comprehensive regulatory framework for MCDs in San Francisco. The Act designates DPH as the lead agency for permitting MCDs. DPH conducts its own review of all applications and also refers applications to other involved city agencies, including the Planning Department, in order to verify compliance with relevant requirements. The Planning Department will only review an application from an MCD once it has received a valid referral from the Department of Public Health. The Planning Commission’s review of the MCD application is generally limited to the locational and physical characteristics of MCDs.

**The City’s MCD Definition.** Article 33 of the San Francisco Health Code defines a MCD as a cooperative or collective of ten or more qualified patients or primary caregivers that facilitates the lawful cultivation and distribution of cannabis for medical purposes and operates not for profit. An MCD may purchase or obtain cannabis only from members of the cooperative or collective and may sell or distribute cannabis only to members of the cooperative or collective. MCDs may operate only on a not for profit basis and pay only reasonable compensation to itself and its members and pay only reasonable out-of-pocket expenses.

**Planning Code MCD Regulations.** The Planning Code defers to the Health Code’s definition of an MCD (see above) but places the following additional restrictions on where and how MCDs can operate:

1. The parcel containing the MCD cannot be located within 1,000 feet from a parcel containing a public or private elementary or secondary school; or a community

- facility and/or recreation center that primarily serves persons under 18 years of age;
2. the MCD is not located on the same parcel as a facility providing substance abuse services that is licensed or certified by the State of California or funded by the Department of Public Health;
  3. no alcohol is sold or distributed on the premises for on or off-site consumption; and
  4. if medical cannabis is smoked on the premises the dispensary shall provide adequate ventilation within the structure such that the doors and windows are not left open for such purposes, resulting in odor emission from the premises;

MCD applications generally require a mandatory Discretionary Review (hereinafter DR) hearing before the Planning Commission. Unlike other mandatory DRs, which only require a 10-day notice to adjacent neighbors, MCDs require a 30-day mailed notification to owners and occupants within a 300 foot radius of the subject property. In the West Portal NCD, a CU is required to establish an MCD, and in the Excelsior Outer Mission NCD a CU is required to establish an MCD within 500 feet of an existing MCD. Supervisor Yee has also introduced an Ordinance that would require a CU for MCDs in the Ocean Avenue neighborhood. MCDs are categorized as an Institutional Use, which reflects their status as both a non-profit enterprise and a medical service provider.

**Health Department MCD Applications.** The cost of an MCD application is \$8,656, with an additional \$4,019 in annual license and re-inspection fees. Permit applications to operate an MCD from the Department of Public Health are required to contain, among other standard pieces of information, the following:

1. All felony convictions of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;
2. Whether cultivation of medical cannabis shall occur on the premises; whether smoking of medical cannabis shall occur on the premises of the medical cannabis dispensary;
3. Whether food will be prepared, dispensed or sold on the premises; and
4. The proposed security measures for the MCD, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

DPH is also required to arrange with the Department of Justice for fingerprinting services and criminal background checks to verify the information provided in the application. In addition to the mandatory DR hearing before the Planning Commission, MCDs are also subject to a public hearing, conducted by DPH, once all other City Departments have completed their review. The purpose of this hearing is to ensure that the applicant has submitted all of the required paperwork and obtained the required approvals. This hearing isn't scheduled by DPH staff until these requirements are met.

**Operational Requirements.** The Health Code outlines several operating requirements for MCDs, which include<sup>5</sup>:

1. MCDs shall be operated only as collectives or cooperatives and operate on a not for profit basis.
2. MCDs shall sell or distribute only cannabis manufactured and processed in the State of California.
3. MCDs must be closed between the hours of 10 p.m. and 8 a.m. the next day.<sup>6</sup>
4. Patients and staff of MCDs shall not disturb the peace in any way.
5. MCDs may not dispense more than one ounce of dried cannabis per patient per visit.
6. MCDs may not maintain more than ninety-nine (99) cannabis plants in up to 100 square feet of total garden canopy measured by the combined vegetative growth area.
7. No medical cannabis shall be smoked, ingested or otherwise consumed in the public right-of-way within fifty (50) feet of a medical cannabis dispensary.
8. Cultivation of medical cannabis on the premises of an MCD must be conducted indoors.
9. Medical cannabis can only be sold and/or dispensed on the premises of a licensed MCD. However, medical cannabis can be delivered to qualified patients outside the premises of the MCD if the person delivering the cannabis is a qualified patient and a member of the MCD.
10. MCDs are not permitted to obtain an ABC license or sell alcohol.
11. MCDs are required to maintain records of all qualified patients.
12. MCDs shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within 100 feet of the premises.
13. MCDs shall provide and maintain adequate security on the premises, including lighting and alarms.
14. Signage for the medical cannabis dispensary shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.
15. MCDs must display the following text outside of the store front with a minimum 2" font: *"Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries."*
16. MCDs must provide the Health Department and all neighbors located within 50 feet of the establishment with the contact information of the designated community liaison, who is charged with addressing operating problems with the MCD.
17. MCDs may purchase or obtain cannabis only from members of the medical cannabis dispensary's cooperative or collective and may sell or distribute cannabis only to members of the medical cannabis dispensary's cooperative or collective.

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<sup>5</sup> These regulations have been edited and condensed for ease of reading and to save space. The full text of these requirements can be found in Section 3308 of the Health Code.

<sup>6</sup> Section 303 of the Health Code allows two MCDs to operate 24 hours a day. These MCDs must be located at least one mile from each other and be accessible by late night public transportation services. To date, no MCD has been permitted to operate 24 hours.

18. MCDs may sell or distribute cannabis only to those members with a medical cannabis identification card or a verifiable, written recommendation from a physician for medical cannabis.
19. All employees must be 18 years of age or older. People under the age of 18 are not permitted on the premises of an MCD unless that person is a qualified patient with a valid identification card.
20. MCDs that display or sell drug paraphernalia must do so in compliance with California Health and Safety Code.
21. MCDs shall maintain all scales and weighing mechanisms on the premises in good working order.
22. MCDs that prepare, dispense or sell food must comply with and are subject to the provisions of all relevant State and local laws regarding the preparation, distribution and sale of food.
23. MCDs must meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Department of Public Health.
24. MCDs must be ADA accessible.

**Operational Regulations.** The Health Code also includes operational regulations, which include:

1. A requirement that the operator provide patients and customers with information regarding those activities that are prohibited on the premises;
2. A requirement that the operator prohibit patrons from entering or remaining on the premises if they are in possession of or are consuming alcoholic beverages or are under the influence of alcohol;
3. A requirement that the operator require employees to wash hands and use sanitary utensils when handling cannabis;
4. A description of the size and type of notice of hearing to be posted in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated and the number of days said notice shall remain posted; and
5. A description of the size and type of sign posted near the entrances and exits of medical cannabis dispensaries providing notice that no medical cannabis shall be smoked, ingested or otherwise consumed in the public right of way within fifty (50) feet of a medical cannabis dispensary and that any person violating this policy shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of \$100.

**Number of Patients.** This question is difficult to answer because while the City knows how many MCDs have been authorized, the City doesn't have similar records on the number of medical cannabis patients who have received authorization from doctors. Nor, does the City know where patients may live. Further, some patients may come from outside the City to purchase medical cannabis. While the State has a centralized registry for medical cannabis patients, the registry was made voluntary and relatively few patients have signed up<sup>7</sup>. The

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<sup>7</sup> Assemblywoman Nora Campos, a San Jose Democrat, sponsored a bill (AB2465) that would have required anyone who wants to claim a legal right to use marijuana for health reasons to apply for a county-issued identification card. The bill appears to have died in committee last year.

California Department of Public Health reports that during the fiscal year that ended last June, the state had only 9,637 valid card holders. In Colorado, by contrast, the state with a medical cannabis regime most similar to California's but where patient registration and annual renewal is mandatory, the total number of patients holding valid ID cards as of last December was 82,089. If California's patients were registering at that rate, there would be more than 615,000 patients<sup>8</sup>. According to the report submitted by the Police Department for this report (see Exhibit C), some MCDs in San Francisco have as many as 15,000 members; a good number of these may come from outside of the City.

### Federal Laws

Cannabis was first criminalized in the US in 1937 with the Cannabis Tax Act, which made possession or transfer of cannabis illegal throughout the United States under federal law. This ban excluded medical and industrial uses, which were taxed at a nominal rate. Since then, the most significant federal action on the regulation of cannabis was in 1970 when it was classified as a Schedule I substance under the Controlled Substances Act (hereinafter CSA), where it remains today. Schedule I substances are considered to have a high potential for dependency and no accepted medical use, making distribution of cannabis a federal offense.

**The Ogden Memo.** In October of 2009, the Obama Administration issued what is commonly referred to as the "Ogden Memo," which encouraged federal prosecutors not to prosecute people who distribute cannabis for medical purposes in accordance with state law. The memo advised U.S. attorneys to focus on going after cannabis dispensaries that posed as medicinal but were actively engaged in criminal acts, such as selling to minors, possession of illegal firearms or money-laundering. The idea was to raid only MCDs that use medical-cannabis laws as a shield. Despite that memo, California-based U.S. Attorneys initiated a major crackdown on medical cannabis operations throughout the state starting in 2011. There were more than 100 raids nationwide on cannabis dispensaries during Obama's first term<sup>9</sup>. In San Francisco, the City lost 7 dispensaries<sup>10</sup>, all of which were approved per the City's MCA.

**August, 2013 Memo.** In late August of 2013, the U.S. Department of Justice (hereinafter USDOJ) announced an update to their cannabis enforcement policy. The statement reads that while cannabis remains illegal federally, the USDOJ expects states like Colorado and Washington to create "strong, state-based enforcement efforts... and will defer the right to challenge their legalization laws at this time." The USDOJ also reserves the right to challenge the states at any time they feel it is necessary. According to the memo, federal authorities still will prosecute individuals or entities involved in the following activities:

1. The distribution of marijuana to minors.

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<sup>8</sup> Leff, Lisa. "How Many Pot Patients California Has Is Anyone's Guess." Salon.com, March 24, 2012. Web December 11, 2013.

<sup>9</sup> Dickinson, Tim. "Obama's War on Pot." RollingStones.com, February 16, 2012. Web, December 13, 2013.

<sup>10</sup> Medical Cannabis Task Force. "Annual Committee Report: Legal Committee" 2012-1013, pg. 2.

2. Directing revenue from marijuana sales to gangs and cartels.
3. Diverting marijuana from states where it is legal to other states where there are no laws allowing for marijuana use.
4. Using legal sales as cover for trafficking operations.
5. Using violence and or firearms in marijuana cultivation and distribution.
6. Driving under the influence of marijuana.
7. Growing marijuana on public lands.
8. Possessing marijuana or using on federal property.

San Francisco has very strong operational and locational restrictions, in contrast to other municipalities in California such as Los Angeles and San Jose, which have had to force the closure of hundreds of MCDs over the past year. However, the lack of a strong enforcement apparatus at the state level has made the continued closures of MCD in San Francisco likely. California would need to adopt a regulatory framework and enforcement mechanisms similar to those in Colorado, which regulates consumption, licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores. There has been some effort at the state level to address this issue, but so far nothing has passed either house<sup>11</sup>.

**Drug Free School Zones.** Drug Free Schools Zones were instituted in the 1980s as a reaction against wide spread crack use in the inner cities. While some states have their own version of this law, the federal government was the first to adopt a 1000 foot drug free buffer around sensitive uses. The Drug Free School Zone legislation augments the CSA with several additional offenses carrying increased maximum penalties, when the crimes are committed within a specified distance of a school or other facility regularly used by children. Under Federal law, the affected areas can include illegal federal drug sales on, or within one thousand feet of a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility. While these laws have their undeniable appeal - nobody wants drugs near schools - in a dense urban environment, a 1000 foot buffer can make every place a stay-away zone.<sup>12</sup> Further, in San Francisco, this law has been used by the USDOJ to target MCD that are within 1000 feet of not just schools but other sensitive uses outlined in the federal law.

**Banking.** Because the Federal Government has regulatory authority over banks, it is extremely difficult for MCDs to maintain a bank account. Most banks refuse to do business with licensed dispensaries, for fear of federal prosecution for money-laundering and other federal drug crimes. Once a bank account is found to be associated with an MCD it is immediately closed by the bank, as a result most MCDs are required to conduct business entirely in cash and have to devise

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<sup>11</sup> Assemblyman Ammiano introduced AB 473, which would create the Division of Medical Marijuana Regulation and Enforcement within the Department of Alcoholic Beverage Control. This bill made it out of committee, but failed to pass the house on a vote of 35 to 37 on May 31, 2013.

<sup>12</sup> Join Together Staff. "Drug Free School Zoned Called Unfair, Ineffective." [www.drugfree.org](http://www.drugfree.org), March 23, 2006, Web January 22, 2014.

complex and creative ways to manage their accounts and meet their payroll. Recreational cannabis businesses in Colorado and Washington are also dealing with this issue. Recently, the situation seems to be changing. This January, US Attorney General Eric Holder announced that U.S. treasury and law enforcement agencies will soon issue regulations opening banking services to state-sanctioned marijuana businesses. Holder specified that the new rules would address problems faced by newly licensed recreational pot retailers in Colorado, and medical marijuana dispensaries in other states.<sup>13</sup>

### Cannabis Now

Since California passed proposition 215, 19 more states and the District of Columbia have enacted similar laws. More recently, and perhaps more significantly, voters in Washington State and Colorado legalized cannabis for recreational use. This year, both Colorado and Washington will join Uruguay as the only places in the world where you can legally buy, sell and possess cannabis for recreational use<sup>14</sup>. The federal government has been willing to let this experiment play out so long as the states abide by the expectations outlined in the Justice Department's August 2013 memo. Washington and Colorado are the country's guinea pigs for legalized recreational cannabis use, and have had to deal with various policy and regulatory challenges including taxation, minimizing or eliminating the back market, federal banking rules, land use, and a host of other regulatory issue. California and San Francisco should be paying close attention to how they handle these issues because recreational cannabis may be again considered by the voters of the Golden State.

Several groups have filed proposals to put recreational cannabis initiatives on California's 2014 ballot and our former Mayor and current Lieutenant Governor, Gavin Newsome, is spearheading an effort to place an initiative on the ballot in 2016. According to a recent Tulchin Research poll, nearly two-thirds (65 percent) of Californians support legalizing, regulating and taxing recreational cannabis in the state. While just 32 percent oppose legalization and 3 percent were undecided. Last time this was on the ballot in 2010, the measure failed statewide 53.5% to 46.5%. It's noteworthy that in San Francisco, Prop 19 garnered 63.6% of the vote, second only to Santa Cruz County where it garnered 63.7% of the vote. All sign point to legalization of the recreation use of cannabis within the next three years, and such an initiative is likely to pass in San Francisco by a wide margin.

More than most cities in the United States, cannabis has been an integral part of San Francisco culture for a long time. It was with Allan Ginsberg when he read Howl, it was in the air during the Summer of Love, Armistead Maupin made it a character in his Tales of the City series, and even Harvey Milk was familiar with cannabis. One can smell it on the streets, on MUNI and at parties. Some Giants fans smoke it before games along McCovey Cove, and some movie goers take up outside the Metreon before the movies. People from all walks of life and within every

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<sup>13</sup> Ingman, David. "Eric Holder Just Announced A Major Shift on US Marijuana Policy." Reuters.com, January 23, 2014. Web January 30, 2014.

<sup>14</sup> The Netherlands has a prohibition on cannabis, but tolerates the drug and does not prosecute for small amounts of possession, sale, and cultivation. Otherwise, it is essentially legal there as well.

profession use cannabis for recreation purposes in San Francisco<sup>15</sup>; whether one partakes in it or not, cannabis is a part of this City, its culture, and its history. When cannabis becomes legal for recreational use in California, San Franciscans will likely demand that the City take a progressive approach on how and where it is sold.

How legalization will affect the City's land use regulations will depend largely on what passes at the ballot box. Moreover, any changes we make to the City's MCD land use regulation and process should take into consideration that recreational cannabis will most likely come to California in the next few years. Existing MCDs are well capitalized to transition from purely medical providers to recreational providers once that happens. The quality and character of the operations we permit now will set the standard for the recreational cannabis providers once legalization comes to pass. The locational requirements we put in place now will almost certainly impact where recreational cannabis establishments are located once recreational use becomes legal.

### Questions

The following questions were posed to the various individual that were interviewed for this report. While groups and individuals expressed extremely different perspectives on how our current MCD regulations are impacting the health safety and welfare of our communities, several common themes did surface, which are detailed below. Each interview added new perspective and contributed to the Department's understanding and impressions of the issues. Some questions were more appropriate for some groups than others and not every interviewee had opinions on every question. In order to get the most candid responses, no interviewee is directly quote in this report.

#### **1. The extent to which MCDs are concentrated in particular communities within San Francisco.**

There is a consensus among the interviewed stakeholders that MCDs are concentrated into only a few communities. MCD advocates lament that there aren't enough places for MCDs to open, especially in the northern and western parts of the City, while some neighborhoods, the Outer Mission in particular, expressed concern about an overconcentration of MCDs. Both groups are frustrated at the City's lack of action on addressing their particular concerns. What caused this concentration can mostly be attributed to the City's 2005 MCA, which established the land use restriction for MCDs in San Francisco. While San Francisco has performed much better than other large cities in California<sup>16</sup> because of the MCA, the Act should be amended if the City is to address MCD concentration.

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<sup>15</sup> Nagourney, Adam. "Few Problems with Cannabis for California." NYTimes.com, October 26, 2013. Web February 10, 2014.

<sup>16</sup> Nagourney, Adam. "Few Problems with Cannabis for California." NYTimes.com, October 26, 2013. Web February 10, 2014.

MCDs are permitted in what the Planning Department refers to as the “Green Zone”, which is based on the City’s 2005 MCA’s land use restrictions (see Exhibit H). The Green Zone map shows properties that are within the permissible zoning districts and are not located within 1000 feet of a school. The map doesn’t show the properties that are outside of the 1000 foot buffer around recreation buildings that primarily cater to people under the age of 18, or properties that contain drug treatment centers, both of which are restrictions outlined in the MCA. It also doesn’t show which properties have suitable commercial spaces and willing landlords, or which neighborhoods are more receptive to MCDs. When these factors are included, the limited pool of potential MCD sites shrinks even further. If the Federal restrictions for Drug-Free zones were shown, the Department believes there would likely be no eligible sites within San Francisco.

The largest area of the Green Zone is located in the downtown core, but there are parts of Green Zone in most areas of the City. As shown in Exhibit F, of the 29 permitted and operational MCDs in San Francisco, 21 or 72% are located in the north eastern part of the City (Divisadero to the west and Caesar Chávez to the south), and the majority of those, 17 of the 21 or 81%, are located South of Market Street. The north eastern part of the City has the greatest population density and contains the largest area of the green zone, so it isn’t surprising that most of the MCDs would be located in these areas. However, that doesn’t explain the complete lack of MCDs in other areas, which presumably have medical cannabis patients and contain portions of the Green Zone. Notably, there are no MCDs located in the Inner or Outer Sunset Districts, Outer Richmond, Park Side, West Portal, Haight Ashbury, Laurel Heights, the Marina, or North Beach; and there is only 1 MCD in the Outer Richmond.

Some of this could be inertia; MCDs, like other businesses, may gravitate towards one another to attract customers and provide choice. Some of it might be because MCDs want to open in areas with the least amount of neighborhood opposition; MCDs that are located downtown or in SOMA probably don’t face as much neighborhood opposition as MCDs that try to locate within neighborhood commercial districts. Whatever the specific reason, it is hard to deny that MCDs are clustering in certain neighborhoods. This is at least partly because of the land use restrictions enacted in the 2005 MCA that limits the areas where they can locate, but because the Green Zone is dispersed throughout the City it can also be attributed to outside forces that discourage MCD in certain neighborhoods.

**2. The nature and extent of effects of the location requirements for MCDs on medical cannabis patients’ access to medical cannabis.**

Patients and patient advocates assert that the City’s location requirements are having a significantly negative effect to their access. As mentioned above, there are numerous neighborhoods in the City that do not have any MCDs. This unequal distribution requires some patients to travel long distances to obtain their medicine and for patients who require a large amount of medicine and have to visit MCDs several times a week, this can be quite a burden. Based on a survey conducted by American’s For Safe Access (See Exhibit E) 48.49% of SF Residents travel an average distance of three or more miles to their MCD of choice. Further, at least 56.8% of San Francisco respondents do not live

within walking distance of an MCD and 61.74% of made a trip to an MCD every other day. Journeys to MCDs by public transit from underserved neighborhoods can take up to an hour each way, which is a long time for anyone but especially for patients that have illnesses or disabilities that impair their mobility.

Several MCDs offer deliver service, and three locations in the City only operate as delivery service. This is a great solution for some patients who don't live near an MCD or who can't leave home because of their illness. However, according to advocates, there are patients that cannot use delivery services or prefer to go to the MCD for a variety of reasons. Patients may not feel comfortable having medical cannabis delivered to their home; some MCD patients live in government assisted housing or SROs where anti-drug policies are strictly enforced. Some patients prefer to discuss their medication options with the person behind the counter; different strains of cannabis have different affects, and the person behind the counter has the expertise to help patients find the right strain of cannabis to address their particular needs. And finally, MCDs provide patients a way to socially interact with other patients helping to foster community, which also aids in improving health and wellness.

Some MCD owners also voiced concern about existing MCDs being displaced when sensitive uses move within 1000' of an existing MCD (see attached letter from Access of Love). There are no city or state laws that would require existing MCDs to close if a sensitive use moved near it; however, some MCD owners contend that the federal government is using the Safe School Zones law as justification to target MCDs near sensitive uses, regardless of local or state law. As a result, some MCD advocates would like to see the City restrict sensitive uses from moving closer to existing MCDs.

**3. The nature and extent of effects of the location requirements for MCDs on the public health, safety and welfare in the communities in which MCDs are located.**

The impacts of MCDs on the communities in which they are located, like any business, are primarily determined by how the business operates. MCDs can offer many benefits to city residents including better access to medication, increased safety, and added foot traffic for the neighborhood. On the other hand, the nature of this peculiar use can also make integrating it into the community challenging. The following is a discussion of some of the benefits and challenges MCDs bring to neighborhoods. Some of the challenges are faced by a varied of businesses, such as double parking, but some are also peculiar to this specific use, such as exclusivity and "vibe." Throughout the interviews conducted by the Department a narrative of the issues emerged; the following categories are an attempt to distill the issues and concerns into their broader themes.

**Double Parking.** Double parking is an issue in all commercial areas of the City, not just where MCDs are located. While several MCDs have strict no double parking policies, going so far as to have their security guards turn double parking patients away, still the issue persists. Some nearby businesses also complain about MCD patients illegally parking in private lots and being met with hostility and anger when confronting the illegal parkers about it. There are ways that the Planning Code and planning process can

address the issue of double parking, such as requiring certain monitoring conditions as part of the approval process, but the most effective way to address this issue is to have the City's parking and traffic laws more consistently and effectively enforced.

**Diversion.** While there are no hard statistics on the practice, diversion or reselling is a common complaint and has been witnessed by several community members. The issue arises when a patient buys medical cannabis and then resells it, often around the corner or even in front of the MCD, to a non-patient. Like the double parking issue, the planning and land use process is not the most effective way to deal with this issue. If reselling is witnessed by police there should be legal consequences, but short of catching resellers in the act the next most effect way to deal with the issue is for the MCD operators to have a strict no tolerance policy for this type of behavior and monitor the area around their stores to ensure that this doesn't happen. The Health Code does have rules that require MCD operators to monitor the front of their establishments for litter and cannabis smoking, but there isn't a specific provision in the Health Code that addresses reselling or diversion monitoring.

**Convenient Access.** Convenient access to MCDs is a benefit to a community's, health, safety and welfare. MCD patients that suffer from physically debilitating illnesses greatly benefit from convenient access because they can more easily access their medication. But even beyond that population, having convenient access benefits all MCD patients and the City overall. It allows patients to shop in their communities, saving time and reducing traffic. It also lessens the burden on City neighborhoods where MCDs are clustered. We wouldn't expect only a few neighborhoods to have essential services such as grocery stores or banks, and we shouldn't expect only a few neighborhoods in the City to have MCDs.

**Crime and Safety.** Based on the information available to the Department, it does not appear that MCDs have a negative impact on crime or community safety, and they may actually improve safety in certain neighborhoods because they provide additional eyes on the street. According the report submitted to the Department by SFPD (see Exhibit C), the few issues reported to SFPD regarding MCDs have more to do with quality of life concerns, such as double parking, smell, and loitering, rather than crime and safety. This is also consistent with the types of complaints filed with DPH. There are also several related studies out of UCLA that deal with this issue. One study showed that there was "no correlation between increased violent and property crime and the density of MCDs."<sup>17</sup> And another study showed that MCDs located in Sacramento with robust security systems actually had lower crime rates within 250 feet than MCDs without those security systems<sup>18</sup>. Another study done by RAND Corporation showed that crime actually decreased around MCDs in Los Angeles; however, this study was later retracted

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<sup>17</sup> PubMed.Gov. "Exploring the ecological association between crime and medical marijuana dispensaries." <http://www.ncbi.nlm.nih.gov/pubmed/22630790>, July, 2012. Web January 21, 2014

<sup>18</sup> Hewitt, Allison. "Tracking how pot dispensaries affect crime." <http://newsroom.ucla.edu>, September 27, 2011. Web December 11, 2013.

by RAND because “the crime data used in the analysis were insufficient to answer the questions targeted by the study.”<sup>19</sup>

**Neighborhood Vitality.** MCDs can improve neighborhood vitality in many ways. Like any small business the mere act of filling a vacant store front improves neighborhood vitality by bringing added foot traffic to a neighborhood. Some MCDs also have also revitalize neglected store fronts, improved side walk conditions, planted trees, and made other financial investments in the neighborhoods. Two specific examples are SPARC at Mission and 8<sup>th</sup> Street, often called the “Apple Store” of MCDs, and the Green Cross at Mission and Silver, which is a more typical MCD operation. SPARC took over a small industrial type building on a neglected stretch of Mission Street between 8<sup>th</sup> and 9<sup>th</sup> Streets. SPARC renovated the store front using multi-colored obscured glass panes arranged in a unique pattern. While the store front isn’t transparent, it’s certainly an improvement to the neighborhood and enhances the pedestrian experience along Mission Street. The Green Cross took their improvements a step further by replacing the worn-out sidewalk in front of their store, planting trees and filling the tree well with flowers. Both MCDs recognize the importance that neighborhood vitality plays in the success of their operation and have made significant financial investments in order to ensure that vitality.

**Odor.** Whether it’s being smoked or it’s just sitting there in a bag, cannabis has a very distinct and pungent odor. To some the smell is pleasant and welcome, while others find it off-putting or even feel ill from the smell. In some extreme cases the smell of just the cannabis plant can cause a severe allergic reaction. In discussions with some community members, smell often came up as an issue of concern; however, based on DPH complaints, odor emitting from MCDs does not appear to be a huge problem citywide. According to DPH, within the past couple of years there have only been two odor complaints linked to MCDs. One complaint was of odor emanating from an open door to the street, and another was from someone complaining about their neighbor, who was an MCD owner, smoking cannabis. There is no provision in the Health Code that requires MCDs be properly ventilated; however there is a general “nuisance” line (Health Code Section 3308-(e)) that can be applicable to all uses including MCDs. Also, if medical cannabis is smoked on the premises, the Planning Code requires that the MCD “provide adequate ventilation within the structure such that the doors and windows are not left open for such purposes, resulting in odor emission from the premises.”

**Vibe.** Many neighbors complain about what they call the negative “vibe” of MCDs, which from their standpoint is caused by how MCDs relate to the street and the attitude of the MCD’s operator’s and employees. What the neighbors describe as “vibe” can be described by the combined effect of two factors: design and neighborliness. From a design perspective, some MCDs downgrade the visual character of a neighborhood by using obscured windows and unattractive storefronts. Neighborliness is harder to

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<sup>19</sup> Rand Corporation. “RAND Retracts Report about Medical Marijuana Dispensaries and Crime.” <http://www.rand.org/news/press/2011/10/24.html>, October 24, 2011. Web January 21, 2014.

characterize. Neighborliness can be experienced by the way staff interact with the public. Staff and security guards working at the MCD's can present as aloof, friendly or hostile. Neighborliness can also indicate the level of involvement of an MCD operator with established community institutions and celebrations: such as participation in street fairs, support of community-serving nonprofits and recreational events. While the Code can't force problem MCD operators or their employees to be friendlier, it can require that greater attention be paid to the design of the store front, the pedestrian experience and how an MCD responds to a neighborhood context. Most MCDs have obscured windows that cut off the facility from the rest of the street and are often covered by security bars. This type of storefront negatively impacts the pedestrian experience and also creates a feeling that something unsavory is happening behind the obscured glass.

**Exclusivity.** MCDs are by their nature exclusive enterprises and don't provide a service or product that is accessible or needed by the majority of the public. Only those people with a referral from a doctor can enter an MCD, let alone buy the products that MCDs sell. In this way MCDs are not like other commercial uses in the city. MCDs are often compared to pharmacies, but pharmacies allow anyone to enter, and even if you don't take prescription medication they usually sell toiletries or over the counter medication that most people need and buy. MCDs are a unique use in this respect. There's really no solution to this issue given the nature of medical cannabis; however, this concept of exclusivity should be considered when looking at concentrations in certain neighborhoods. An over concentration of MCDs in any one neighborhood means that there are a number of establishments that are not accessible to the vast majority of people who live in the neighborhood.

**Community.** MCDs can play a role in building community; not only among patients but also within the neighborhood. The Vapor Room in the Lower Haight, which was shut down by the USDOJ, was in some ways a model example on how and MCD can give back to the community. The operators of this establishment invested in and helped with organizing street fairs, financing murals, participating in the neighborhood organization and by many accounts were very responsive to neighborhood complaints. But this type of community involvement is not limited to just one MCD. Many do participate in neighborhood or local merchant organizations and some even provide grants to local schools. The Apothecarium at Church and Castro recently gave a grant to the Harvey Milk Civil Rights Academy, a local elementary school in the Castro. However, based on the experience of some neighborhood organization, this community centered approach isn't universal. Like any industry some businesses will be more involved than others and it really depends on the people behind the operation that set the tone for how the MCD interacts with the community.

- 4. Whether increased community input into the approval process to establish an MCD would benefit the public health, safety and welfare, and, if so, what procedures would be most effective in increasing such community input.**

Members of the public can make their concerns known to the Planning Department at any time during the permitting process; they have the opportunity to give testimony

before the Planning Commission; there is a separate publically noticed approval hearing held by The Director of DPH; and any MCD permit can be appealed to the Board of Appeals once issued. Yet, while opportunity exists for community input, it is difficult to know when a permit for an MCD has been filed so that you can engage in the process. The only notice neighbors get about an MCD from the Planning Department 30 days before the hearing. Many MCDs do conduct their own version of a pre-application meeting<sup>20</sup> or open house prior to or early in the permitting process, and not surprisingly those MCDs that hold a pre-application meeting for neighbors, tend to be the ones that are more successfully integrated as community assets. Yet this is not a required practice and any pre-application outreach is done voluntarily.

In addition to knowing when a permit is issued it's also important to understand how the system works so that you can engage in it. While the Department has made a concerted effort to improve its outreach and public information efforts, the City bureaucracy and Planning Code remain daunting to the new participant. In neighborhoods that have more experience dealing with the Department and land use issues in the City, the system tends to work fine. MUMC and DTNA, both organizations that have extensive experience dealing with land use issues, didn't have problems with the current level of community input. However, neighborhoods with less knowledge of the process or less experience working with the Department felt that the system was confusing and unresponsive. Knowing the questions to ask, what the process is, and how to engage in it were all challenges.

Every neighborhood group interviewed for this report felt that a mandatory pre-application meeting was a good idea, and even some MCD owners and advocates the Department spoke with felt that making it a mandatory requirement would benefit the process. Pre-application outreach would enable the neighborhood groups to get involved early in the process and allow MCD owners the opportunity to introduce themselves to their neighbors and hear their concerns. It may also help eliminate MCD operators that aren't prepared to make an investment in the community or become community partners. Since the Department of Public Health is the lead agency for MCD applications, and ultimately responsible for their approval and regulation, it makes sense that pre-application meetings should be done prior to submitting an application to DPH. This will allow neighbors to get involved at the earliest possible point in the process to ensure that their voices are heard from the outset.

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<sup>20</sup> The Pre-Application Meeting is a mandatory form of community outreach conducted by the project sponsor in order to receive initial feedback regarding certain project types prior to submittal to the Planning Department or the Department of Building Inspection. Adjacent neighbors and relevant neighborhood groups are invited to attend this meeting which must take place during certain hours of the day and within a certain distance from the project site. This meeting is intended to initiate neighbor communication to identify issues and concerns early on; provide the project sponsor the opportunity to address neighbor concerns about the potential impacts of the project prior to submitting an application; and, reduce the number of Discretionary Reviews (DRs) that are filed.

5. **Projected impacts on the public health, safety and welfare of expanding the areas in which MCDs can be located.**

Expanding the Green Zone could address MCD advocate's concern over the lack of available places for MCDs to operate and the concerns that some community members have about the over concentration of MCDs in their neighborhood. The Department identified three possible ways to expand the Green Zone and increase the number of available commercial spaces. The first is to allow MCDs in zoning districts where they are not currently permitted, such as PDR, South of Market Districts and NC-1 Districts. The second is to reduce the Planning Code required buffer around schools from 1000' to 600' per State Law (see AB 2650 discussed on page 4); and the third is to allow MCDs on the second floor in neighborhood commercial districts. Doing all three of these actions together would expand the Green Zone approximately five times the current size, from 462 acres to 2373 acres (see Exhibit H).

**Add Zoning Districts.** The best part about this option is that it increases the size of the Green Zone dramatically; significant areas of the City's eastern portion would turn green on the map and a few neighborhood commercial centers in the western part of the city would open up as well. The worst or perhaps least ideal outcome of this option is that it does little to increase the Green Zone in the western and northern areas of the City where there are currently no or too few MCDs. Regardless, this option should be considered because it has the potential to open up more commercial space for MCDs than the other two options. Whether or not all non-residential neighborhoods should be included requires greater discussion with the various stakeholders, and what impact this could have to the City's supply of PDR space should be investigated more thoroughly; however looking at MCDs as land use similar to other retail operations, it makes sense to allow them in any zoning district where retail operations are permitted, with the caveat that certain restrictions should still apply to their location and operation.

**Reducing the Buffer.** San Francisco instituted its 1000 foot buffer around schools in 2005, prior to the State adopting land use controls for MCDs. The City's 1000 foot rule was derived from SB 420 (discussed on page 3), which prohibits medical cannabis from being smoked, but not sold, within 1000' of a school. SB 420's restriction was likely based on the federal government's Drug Free School Zone law (discussed on page 9) that places greater penalties on the sale or use of drugs within 1000 feet of schools and other sensitive uses. While not necessarily an arbitrary number, the federal government did not develop the 1000 foot rule with MCDs in mind or San Francisco's dense urban form; it's a blunt instrument and doesn't account for neighborhood boundaries, paths of travel for students, or barriers like wide roadways and hills.

Reducing the 1000 foot buffer to the state's 600 foot buffer minimum would do the most to expand the Green Zone more evenly throughout the City, potentially expanding access for patients who live in underserved neighborhoods. Since most of the commercial zones in the western side of the City are already included in the Green Zone, what prevents the Green Zone from expanding in these neighborhoods is the 1000 foot buffer limitation. However, MCDs that established prior to the City adopting the MCA in 2005 and were

located closer than 1000 feet to schools have been targeted by the USDOJ for closure. Should the State adopt a more robust regulatory framework as required by Obama Administrations August 2013 memo, the USDOJ may step back its enforcement activities on MCDs, but until then an MCD operator would be taking a greater risk if she was to open an MCD less than 1000 feet of a school.

Reducing the 1000 foot buffer could also be a hard sell to San Francisco's schools. A representative from SFUSD expressed concern about how this change would impact schools and whether or not this would increase student exposure to cannabis, thereby increasing cannabis use among the student population. While no one wants medical cannabis to be diverted to students, at least one study done in Los Angeles, which has more lax MCD regulations than San Francisco, found no evidence of increased drug use among high school students during the period when medical marijuana shops opened there.<sup>21</sup> This isn't to say that the concern expressed by SFUSD should be dismissed; developing brains are particularly sensitive to drug and alcohol use and cannabis has been shown to change teenage brain structure and impair memory function<sup>22</sup>. However, there isn't any evidence that the Department has found which shows the existence of MCDs near schools increases teenage drug use. Further, the 1000 foot buffer is an extreme metric when considered within the context of San Francisco dense urban environment. Reducing the buffer from 1000 to 600 feet will still prevent MCDs from locating on the same block as a school and the mandatory DR process will continue to allow for a more nuanced review of the proposed MCD location.

**MCDs on the Second Floor.** Allowing MCDs on the second floor wouldn't expand the geography of the Green Zone, but it could potentially increase the number of commercial spaces available for MCDs. It would also partially address issues of transparency, over concentration and exclusivity; MCDs on the second floor have less of a visual impact on the street than those on the ground floor. MCDs were originally prohibited from the second floor because of concerns over ADA access; most second floor spaces in our NCDs are not ADA accessible. However, ADA access and appropriate MCD location are two separate issues. You can have an accessible second floor commercial space, just as you can have an inaccessible ground floor commercial space. It's unknown how many second floor accessible spaces there are in our neighborhood NCDs, but as a policy matter it doesn't make sense to exclude them from the second floor. There are already limitations in place on the conversion of dwelling units and the Mayor's Office of Accessibility reviews each MCD application to ensure compliance with ADA Accessibility before an application is approved.

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<sup>21</sup> Nagourney, Adam. "Few Problems with Cannabis for California." NYTimes.com, October 26, 2013. Web February 10, 2014.

<sup>22</sup> Bergland, Christopher. "Heavy Marijuana Use Alters Teenage Brain Structure." <http://www.psychologytoday.com>, December 16, 2013. Web February 3, 2014.

6. **Best operational practices that should be employed by MCDs to ensure the public health, safety and welfare, including but not limited to minimum levels of security measures, hours of operation, and location.**

The best operational practices for MCDs are those that reinforce their role as a non-profit organization. These MCDs serve their community, provide compassionate care, and act as a care giver to the sick. They offer a clean and safe environment to obtain medication and to medicate. They provide benefits to the community by improving safety, fixing up their store fronts, planting trees and donating local charities. They hire friendly and knowledgeable staff and respond to complaints in a neighborly way. San Francisco is lucky in that many of its MCDs employ most if not all of these best practices. This is in part due to how the medical cannabis in San Francisco formed around compassionate care. It's also due in part to the City's 2005 MCA, which established 24 operational requirements and an additional five operational regulations (see discussion on pages 6 and 7 above).

**Hours of Operations.** MCDs hours of operations are restricted by both the Planning and Health Code, which limits their hours of operation from 8:00 AM to 10:00 PM. The Health Code also allows two MCDs to operate 24-hours a day<sup>23</sup>. In practice, only about six of the City's approximately 29 retail operations stay open until 10:00 PM, most close by 7:00 or 8:00 PM. Most MCDs open at 10:00 or 11:00 AM, with about six opening before then. While at least one neighbor expressed a desire to shorten the hours of operation for MCDs, this wasn't a significant issue of concern for the majority the people interviewed. The current parameters seem to be appropriate and allow each MCD to decide what hours best serve their patients.

**Security.** A good security plan is essential for successful MCD. As an all cash business that sells an illegal product under federal law, these commercial establishments can be an attractive target for criminals. The Health Code requires that MCDs submit a security plan with their MCD application, but those security plans are not routinely reviewed or approved by SFPD or another expert in security<sup>24</sup>. Regardless, all MCDs have some type of security system that usually includes cameras both inside and outside the store, alarms, a guard at the front door and sometimes a second strong door once the patient gets inside. It may be prudent to have DPH and SFPD set minimum standards for MCD security, but the inherent incentive for MCD operators to protect the business with proper security systems seems to be sufficient. Further, the relatively low incidents of violent crime and robberies associated with MCDs also suggest that further regulation is not required in this area.

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<sup>23</sup> According to DPH, there aren't any MCDs that have taken advantage of this provision of the Health Code. According to the Health Code, MCDs which remain open 24 hours a day must be located more than 1 mile apart and along a major transit line.

<sup>24</sup> A representative from SFPD sent an email to the Department indicating that the Police Department is open to discussing basic security plans with DPH.

**Location.** Like any retail operation, MCDs want to locate in areas that will be able to serve the most customers. This includes heavily trafficked commercial areas, areas close to both public transit and parking, and areas that are less likely to make it a target of the USDOJ. From the community's perspective, the general perspective was that MCDs should not be clustered too close together or be located too close to residential districts. From the public policy perspective, MCDs should be located in accordance with the City's MCA, but beyond that it's also in the City's interest to have MCDs located within close proximity to public transit lines, be evenly distributed so that all patients have convenient access to their medicine, and be within commercial neighborhoods that have a diversity of uses. These various interests overlap in many areas, but when considering an MCD application, the Planning Commission seeks to balance the desires of the neighborhood and applicant with the outcome that best advances the City's overall goals and policies.

**On-site Consumption.** When MCDs provide a place for patients to medicate, they also reduce the likelihood that medication purchases at the establishment will be smoked outside of the MCD or within the general vicinity. MCDs that have onsite consumption are also providing a place to medicate for patients who may not be able to in their home because of their living situation or housing type<sup>25</sup>. On-site consumption also helps create MCDs that are more focused on patient care rather than a financial transaction. This in turn helps to facilitate community around the MCD by providing a space for people to interact. Further, on site consumption provides a safe and supportive environment for patients who are often dealing with debilitating and painful illnesses.

Most MCDs who have onsite consumption do so by allowing patients to use vaporizers, as opposed to smoking. Vaporizing is considered by many patients a superior method of ingesting medical cannabis over smoking because it is believed that the patient inhales fewer carcinogens while still receiving the THC that provides medical benefit<sup>26</sup>. Vaporizers use a central heating element within the device to slowly and steadily heat up the medical cannabis to the point just before combustion occurs, between 356° – 392° F. When burning the cannabis, temperatures can reach 1200°+, so the patient may be inhaling more toxins that don't provide any medical benefit and can potentially be harmful. Vaporizing also produces vapor and not smoke, reducing fumes and potentially lessening the impact to employees and neighbors. While vapor does have a faint smell, it dissipates quickly.

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<sup>25</sup> While San Francisco residents can currently smoke in multifamily dwelling units as long as their lease allows, cities such as Berkeley have made it illegal to smoke any substance within apartments and condominiums. Read more about Berkeley's law on KQED's website: <http://blogs.kqed.org/newsfix/2013/12/06/berkeley-approves-smoking-ban> retrieved on 3/3/14.

<sup>26</sup> The Federal Food, Drug and Cosmetic Act prohibits companies with unregulated products from making health claims. The Federal Drug Administration is expected to issue regulations in the near-term. See New York Times article, "A Hot Debate Over E-Cigarettes as a Path to Tobacco, or From It" written by Sabrina Travenise, February 22, 2014. Retrieved from <http://www.nytimes.com/2014/02/23/health/a-hot-debate-over-e-cigarettes-as-a-path-to-tobacco-or-from-it.html> on 3/3/14.

**Staff.** It's important for MCDs to hire employees that are knowledge, professional and friendly. These three characteristics not only improve the patient experience, but they also help maintain good relationships with the adjacent community. Staff at MCDs should know their product so that patients are informed about their choices and they should have a good understanding of Health Code rules and regulation. In addition, security staff should also appear authoritative and professional, yet also friendly to non-patients and patients alike. Owners aren't always there, so it is essential that MCDs higher professional and friendly staff as ambassadors for their MCD to the community.



**Transparency.** As discussed above, two of the main complaints about MCDs are their exclusivity and "vibe". While this can sometimes be attributed to the neighborliness of the MCD employees, it can also be determined design and by how MCDs relate to the street. Many MCDs obscure their windows, but there are some that provide transparency into the store, which helps to better integrate the dispensary into the community. Two MCD in particular, Apothecarium and Barbary Coast, show how an MCD can successfully blend into the community by complying with the Codes existing transparency requirements. Both dispensaries have transparent windows and use half-opened blinds to provide some privacy<sup>27</sup>. The Apothecarium even has an open door staffed by security that further increases the connection to the neighborhood. While privacy concerns should be considered, hiding medical cannabis behind obscured windows only increases the feeling that MCDs are an illicit business.

**Compassionate Care.** Compassionate care is the idea of providing free or reduced cost medicine to patients in need. This service reinforces an MCD's role as a non-profit organization and of taking care of the sick. In 2008, the Board of Supervisors adopted a non-binding resolution urging MCDs to "institute compassionate care programs to relieve the suffering of qualified low and no (income) patients who are not able, due to income, to attain safe and legal access to medical quality cannabis as recommended by a

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<sup>27</sup> Blinds and curtains are not prohibited by the Planning Code's transparency rules, but should remain at least partially open.

physician for their health.”<sup>28</sup> Further study would be required to determine whether the City could require MCDs to provide compassionate care services. However, the Planning Commission can consider compassionate care programs during the entitlement process when discussing an MCD’s overall commitment to the community.

**Community Engagement.** MCDs that engage with the community early in the application process and continue to provide such engagement after approval can truly be positive assets to neighborhood. MCDs can demonstrate early engagement by holding pre-application meetings and open houses, and sustain that commitment by joining merchant organizations, starting beautification projects, and making financial investments in the community. This is true for any business; however MCDs are unique in that they are a new phenomenon, and there is also a suspicion around MCDs because of cannabis’s association with criminal elements and 80-years of anti-drug legislation by the federal government. Therefore, the onus should be MCD operators to demonstrate that they are committed to the neighborhood early in the process and to demonstrate that they plan to maintain that commitment after approval.

#### REQUIRED COMMISSION ACTIONS

Per Ordinance 264-13, the Planning Commission is required to prepare and submit a report to the Board of Supervisors evaluating the provisions of the Planning Code related to the location of medical cannabis dispensaries by May 1, 2014. The Planning Commission may vote to adopt or amend and adopt this report and then forward it to the Board of Supervisors.

#### ENVIRONMENTAL REVIEW

This Report was determined not to be a project per State CEQA Guidelines, Section 15060(c)(2).

#### RECOMMENDATION

The Planning Department’s role in regulating MCDs is mainly limited to land use requirement, DPH is charged with operational oversight and regulatory authority. While other departments have been consulted for this report and issues not under the purview of the Planning Department are discussed here, the scope of this report is primarily focused on the responsibilities of the Planning Commission and the Commission’s delegation to the Planning Department. None of the recommendations in this report have been vetted by other City commissions or department heads. Further, the Department recommends that any monitoring and enforcement responsibilities should stay under the authority of DPH.

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<sup>28</sup> “Urging Medical Cannabis Dispensaries to implement compassionate care programs to serve low and no income patients.” Introduced by Supervisor Mirkarimi. Adopted November 6, 2007. Board File 071505, Enactment Number 623-07

The Department recommends that the Planning Commission make the following policy recommendations to the Board of Supervisors:

1. Maintain the DR process and enhance the DR process by adding Commission findings for MCD DR applications.
2. Expand the Green Zone. Consider three options 1) reducing the 1000 foot buffer to 600 feet, 2) allowing MCDs in more zoning districts and 3) permitting the use on the second floor.
3. Remove the 1000 foot buffer around Recreational Facilities.
4. In the event that the existing Green Zone is expanded, it would be appropriate to institute a buffer around MCDs on the ground floor in Neighborhood Commercial Districts.
5. Require a pre-application meeting for new MCDs.
6. Clarify in the Planning Code's MCDs definition that MCDs located on the ground floor are subject to the Transparency Requirements in Planning Code Section 145.1.
7. Add double parking and diversion monitoring policies in the Health Code.
8. Provide a dedicated source of information and platform for discussion regarding the MCD process in San Francisco.

#### **BASIS FOR RECOMMENDATION**

##### **Recommendation #1: Maintain the DR process and enhance the DR process by adding Commission findings for MCD DR applications.**

**Maintain DR:** There was some discussion about whether or not MCDs should require CU authorization instead of a mandatory DR. There are benefits to the CU process; it places the onus on the applicant to make the case for the use and it is a more robust regulatory tool. When the Commission votes to not take DR, it is allowing DBI to issue a use permit for an MCD at that location. Use permits are more difficult to revoke if the MCD operator is not complying with and conditions of approval; whereas CU approvals can be revoked by the Commission at a public hearing. However, CUs are also an expensive application that would incur additional time and process. The Conditional Use process would be more appropriate if MCDs weren't already heavily regulated and monitored by DPH or if there were too many MCDs in a particular neighborhood, like the Code currently does for restaurant and bars or MCDs in the Excelsior Outer Mission NCD, where there is a concern over overconcentration. The Department recommends maintaining the current DR process because it balances the need for greater access for MCD patients with the need of the community to engage in the approval process.

**Enhance DR with Findings:** In order for the Commission to have a standard set of criteria to base its approval or denial of a MCDs DR Application, the Department recommends that findings be added to the Planning Code to be considered by the Commission when evaluating MCD application. Some suggested findings included:

1. The proposed MCD has demonstrated a commitment to the community through engagement and outreach.
2. If the MCD is located closer than 1000 feet of a school or recreational facility that primarily serves persons under the age of 18, it is not also located along a major path of travel of that use.

3. The proposed MCD will improve patient access by locating in a neighborhood that is currently underserved by MCDs.
4. The propose MCD is located along a major transit line.
5. The proposed MCD is offering unique services to patients including onsite medicating facilities, patient care programs and compassionate care programs.

**Recommendation 2: Expand the Green Zone. Consider three options 1) reducing the 1000 foot buffer to 600 feet, 2) allowing MCDs in more zoning districts and 3) permitting the use on the second floor.**

All three options discussed in this report should be employed to some degree to expand the Green Zone. Each option has its benefits and limitations, but no one solution can address the issues of better access, more even distribution and competing federal law.

First, reducing the buffer around schools from 100 feet to 600 feet should come with certain findings for the Commission to assess the impacts to adjacent schools, and the recognition that MCD operators may be reluctant to locate closer than 1000 feet to sensitive uses for fear of federal prosecution. As discussed in detail on pages 18-19, reducing the 1000 foot buffer to the state's 600 foot buffer minimum would do the most to expand the Green Zone more evenly throughout the City, potentially expanding access for patients who live in underserved neighborhoods. Since most of the commercial zones in the western side of the City are already included in the Green Zone, what prevents the Green Zone from expanding in these neighborhoods is the 1000 foot buffer limitation.

Second, expand the Green Zone into some or all of the non-residential districts where they are currently prohibited, which includes South of Market, NC-1 (Neighborhood Commercial, Cluster), M (Industrial) and PDR (Production Distribution and Repair) districts. This would significantly expand the Green Zone and create additional spaces for MCDs to locate, but there are three significant issues of concern with this proposal. First, it would further cluster MCDs into only one area of the City, as most of these districts are on the eastern side of the City where the majority of the Green Zone and MCDs are already located. Second, it may not provide many new locations near housing (potential MCD clients) and transit service to enable easy access. And third, this change may place additional pressure on the City's limited and shrinking supply of PDR spaces. MCDs are categorized as Institutional Uses; therefore they would not be automatically limited by the retail use size limitations in PDR Districts. If the City does pursue opening up additional PDR districts for MCD uses, considerations should be given to limiting the number and size of MCD in PDR districts, similar to how retail uses are controlled in these districts, or only opening up certain PDR districts to MCDs.

Third, allowing MCDs on the second floor in NCDs can be done immediately without extensive stakeholder outreach because it would not introduce MCDs into areas of the City where they are currently prohibited, and it would help address the aesthetic and exclusivity issues associated with ground floor MCDs (see the discussion on pages 15 and 16). Further, there are already protections in the Health Code that require all MCDs to be ADA accessible, negating the need to prohibit them from the second floor or accessibility reasons. And finally there are robust protections in the Planning Code that limit the conversion of dwelling units throughout the City, reducing the risk that MCDs would displace second floor dwelling units. For these reasons, the Department recommends allowing MCDs on the second floor of NCDs immediately. At the

same time, while the Department believes that expanding the controls to all MCDs on the second floor will create more potential space for MCDs, it will not assist with achieving better distribution of MCDs. The best route for encouraging such distribution would be reducing the buffer from 1000 feet to 600 feet and including more zoning districts in the Green Zone. These more effective mechanisms, however, will require a broader community discussion.

**Recommendation 3: Remove the 1000 foot buffer around Recreational Facilities**

The Code currently restricts MCDs from locating within 1000 feet of a Recreational Facility that primarily serves people 18 years of age or younger. The Department is proposing that this provision be removed because it has found that most Recreational Facilities in the City serve various age groups making the distinction hard to make and difficult to map. Further, it is rarely used to prohibit an MCD in a particular location. Removing it would have little impact on the Green Zone, but it would give more clarity to the process and to MCD operators looking for commercial spaces in which to operate. In its place, the Department recommends that a finding be created that consider sensitive uses around proposed MCDs (see Recommendation 1).

**Recordation 4: In the event that the existing Green Zone is expanded, it would be appropriate to institute a buffer around MCDs on the ground floor in Neighborhood Commercial Districts.**

The MCD community was mixed on the issue of buffering. Some MCD owners voiced support for a buffer around MCDs to prevent overconcentration, while other MCD advocates strongly opposed it. Most neighbors on the other hand were strongly in favor of a buffer. The Department included it as a recommendation in this report primarily because it addresses the issue of MCDs exclusivity (see discussion on page 16 above). MCDs are a peculiar use; they've been compared to pharmacies because they dispense medication and to bars, another use that sells an intoxicating and highly regulated product. In reality, neither of those comparisons captures the unique nature of MCDs. MCDs are private clubs not open to the public, and having too many of them on a commercial street could potentially deaden the street for non-patients. Up until now, the Department was cautious about instituting buffers around MCDs because the Green Zone was so limited. However, if the Green Zone is sufficiently expanded, buffering should also be considered. Conversely, the Department recommends avoiding further locational barriers if other steps are not take to expand the Green Zone. Currently the Excelsior Outer Mission NCD requires a CU for MCDs that are proposing to locate within 500 feet of an existing MCD and a similar provision is being proposed for the Ocean Avenue NCT. Such a proposal could be adopted city-wide.

**Recommendation 5: Require a pre-application meetings for new MCDs**

Pre-applications meeting will provide neighbors the opportunity to learn about the project early in the process and let the applicant assess community concerns before investing significant resources and time into a particular site. Since most MCDs already conduct some form of early neighborhood outreach and engagement, making this a mandatory step in the process is simply codifying a common and reasonably expected practice. Because DPH is the lead permitting and regulatory agency for MCDs, the Department recommends that pre-application meetings be held prior to the application submittal to DPH. The current procedures that the Planning Department uses for required pre-application meetings can also be adopted by DPH.

The Planning Department requires a pre-application meeting for new construction; any vertical addition of 7 feet or more; any horizontal addition of 10 feet or more; decks over 10 feet above

grade or within the required rear yard; and all Formula Retail uses subject to a CU authorization. Applicants are required to invite all relevant neighborhood groups, and all abutting property owners and occupants, including property owners and occupants across the street from the project site. The meeting must be held at the subject site, or within 1 mile of the subject site. Meetings must be conducted between 6:00 p.m. – 9:00 p.m. Monday through Friday or from 10:00 a.m. to 9 p.m. Saturday and Sunday. In addition the Department also requires the use of a standardized invitation, sign in sheet, meeting summary, and affidavit; invitations are required to be mailed out no less than two weeks prior to the meeting.

**Recommendation 6: Clarify in the Planning Code’s MCDs definition that MCDs located on the ground floor are subject to the Transparency Requirements in Planning Code Section 145.1.**

This recommendation is intended to remove some of the stigma surrounding MCDs and better integrate them into a neighborhood. Placing MCDs behind obscured store fronts adds to the misconception that MCDs are an illicit business and it downgrades the visual character and appeal of a neighborhood. Historically, the Department has not required MCDs to comply with the transparency requirements outlined in Planning Code Section 145.1, and until recently, the Planning Code’s transparency requirements have been difficult to interpret and enforce. However, a recent interpretation by the Zoning Administrator, developed in with the Department’s Enforcement Team, has clarified the requirements in a hand out (see Exhibit G) and produced a video<sup>29</sup>. The Department believes that these rules are flexible enough to still permit on site medicating spaces and protect patient privacy.

**Recommendation 7: Add double parking and diversion monitoring policies in the Health Code.**

The Health Code currently requires operators to monitor the public right-of-way in front of the MCD for litter and smoking. To address community concerns, the Department recommends adding right-of-way monitoring for diversion and double parking as well. DPH already enforces double parking and reselling complaints through Section 3308(e) of the Health Code, which “prohibits any breach of peace... or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct...”; however the Department believes it would be beneficial to call out double parking and reselling specifically as these issues are of significant concern for the community.

**Recommendation 8: Provide a dedicated source of information and platform for discussion regarding the MCD process in San Francisco.**

To help alleviate any potential frustration in navigating the MCD process, the Department proposes to establish a dedicated platform for providing detailed information to help inform the public about the steps required in establishing a MCD in San Francisco as well as opportunities to ask questions, voice concerns and be actively engaged. This will be in the form of a dedicated webpage, instructional video or other media source. This recommendation would be a part of the Department’s growing efforts in community outreach and engagement.

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<sup>29</sup> <http://www.sf-planning.org/index.aspx?page=3638>

<b>RECOMMENDATION:</b> <b>Adopt Report and Forward to the Board of Supervisors</b>
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**ATTACHMENTS AND EXHIBITS**

- Exhibit A:      Draft Resolution
- Exhibit B:      Board File 1307345
- Exhibit C:      Police Department Report
- Exhibit D:      Letter from Access of Love
- Exhibit E:      Survey from American's for Safe Access
- Exhibit F:      Location of Medical Cannabis Dispensaries in SF
- Exhibit G:      Planning Department's Storefront Transparency Guidelines
- Exhibit H:      Existing Green Zone & Expansion Potential



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Planning Commission Resolution Motion No. XXXXX

HEARING DATE MARCH 20, 2014

*Project Name:* **Planning Commission Review of Medical Cannabis  
Dispensaries Location Regulations**

*Case No.:* 2013.1255U

*Initiated by:* Supervisor John Avalos [Board File 130734]

*Staff Contact:* Aaron Starr, Legislative Planner  
(415) 558-6362 [aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org)

*Reviewed by:* AnMarie Rodgers, Manager, Legislative Affairs  
AnMarie.Rodgers@sfgov.org

*Recommendation:* **Adopt Report and Forward to the Board of Supervisors**

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**ADOPTING THE REPORT TITLED "EVALUATING THE PLANNING CODE'S MEDICAL CANNABIS DISPENSARIES LOCATIONAL REQUIRMENTS" DATED MARCH 20, 2014 AND DIRECTING STAFF TO FORWARD THIS REPORT TO THE BOARD OF SUPERVISORS.**

WHEREAS, on July 16, 2013, Supervisor Avalos introduced an Ordinance under Board of Supervisors (hereinafter "Board") File Number 130734 amending the Administrative Code, by adding Section 2A.54, to direct the Planning Commission to prepare and submit a report to the Board of Supervisors evaluating the provisions of the Planning Code related to the location of medical cannabis dispensaries by May 1, 2014. and

WHEREAS, The Board adopted said Ordinance on November 27, 2013 as Enactment # 264-13; and,

Whereas, on March 20, 2014, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the draft report prepared by Planning Department Staff; and

WHEREAS, the Commission has reviewed the report and its recommendations prepared by Planning Department Staff; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff and other interested parties; and

WHEREAS, the Report was determined not to be a project per State CEQA Guidelines, Section 15060(c)(2); and

**MOVED**, that the Commission hereby adopts this Resolution to that effect.

**NOW THEREFORE BE IT RESOLVED** that the Commission hereby adopts the attached report "Evaluating the Planning Code's Medical Cannabis Dispensaries Locational Requirements," and directs staff to forward it the Board.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 20, 2014.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 20, 2014

1 [Administrative Code - Planning Commission Review of Medical Cannabis Dispensary  
Location Regulations]

2

3 **Ordinance amending the Administrative Code, by adding Section 2A.54, to direct the**  
4 **Planning Commission to prepare and submit a report to the Board of Supervisors**  
5 **evaluating the provisions of the Planning Code related to the location of medical**  
6 **cannabis dispensaries.**

7 NOTE: Additions are *single-underline italics Times New Roman*;  
8 deletions are *strike-through italics Times New Roman*.  
9 Board amendment additions are double-underlined;  
10 Board amendment deletions are ~~strikethrough normal~~.

10

11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. Findings. The Board of Supervisors hereby finds that:

13 (a) Medical cannabis provides significant benefits to the residents of San Francisco;

14 (b) Medical cannabis dispensaries (“MCDs”) may present unique challenges to the  
15 communities within San Francisco in which they are located;

16 (c) Currently, pursuant to Planning Code Sections 209.3(k), 217(k), 790.141 and  
17 890.133, MCDs are permitted only in certain zoning districts, and a parcel containing an MCD  
18 must meet certain requirements, including but not limited to a requirement that such a parcel  
19 cannot be located within 1000 feet from a parcel containing a public or private elementary or  
20 secondary school or a community facility and/or recreation center that primarily serves  
21 persons under 18 years of age;

22 (d) Current laws governing the location of MCDs have led to a concentration of  
23 MCDs in a relatively small portion of the City;

24

25

1 (e) This concentration has resulted in varying impacts on the communities in which  
2 MCDs are located; and

3 (f) Current laws governing the location of MCDs have resulted in limited access to  
4 medical cannabis for patients in many parts of San Francisco.

5  
6 Section 2. The San Francisco Administrative Code is hereby amended by adding  
7 Section 2A.54, to read as follows:

8 Section 2A.54. PLANNING COMMISSION EVALUATION OF MEDICAL CANNABIS  
9 DISPENSARY LOCATION REGULATIONS.

10 (a) The Board of Supervisors hereby directs the Planning Commission, by no later than  
11 May January 1, 2014, to submit a written report to Board of Supervisors evaluating the impacts on  
12 communities in which MCDs are located, and to make recommendations regarding whether Planning  
13 Code provisions governing the location of MCDs, including but not limited to Planning Code Sections  
14 209.3(k), 217(k), 790.141 and 890.133, should be amended. In this report, the Board of Supervisors  
15 directs the Planning Commission to address the following considerations, at a minimum:

16 (1) The extent to which MCDs are concentrated in particular communities within  
17 San Francisco;

18 (2) The nature and extent of effects of the location requirements for MCDs on  
19 medical cannabis patients' access to medical cannabis;

20 (3) The nature and extent of effects of the location requirements for MCDs on the  
21 public health, safety and welfare in the communities in which MCDs are located;

22 (4) Whether increased community input into the approval process to establish an  
23 MCD would benefit the public health, safety and welfare, and, if so, what procedures would be most  
24 effective in increasing such community input;

1           (5) Projected impacts on the public health, safety and welfare of expanding the  
2 areas in which MCDs can be located; and

3           (6) Best operational practices that should be employed by MCDs to ensure the  
4 public health, safety and welfare, including but not limited to minimum levels of security measures,  
5 hours of operation, and location.

6           (b) In developing this report, the Board of Supervisors directs the Planning Commission  
7 and/or Planning Department staff to consult as appropriate with City boards, commissions,  
8 departments, entities, and officials, including but not limited to the Director of the Department of  
9 Building Inspection, the Director of the Department of Public Health, the Chief of the Fire Department,  
10 the Chief of the Police Department, and relevant community stakeholders, including existing permitted  
11 medical cannabis dispensaries within the City and County of San Francisco.

12  
13           Section 3.

14           (a) Effective Date. This ordinance shall become effective 30 days from the date of  
15 passage.

16           (b) Scope of Ordinance. In enacting this ordinance, the Board intends to amend  
17 only those words, phrases, paragraphs, subsections, sections, articles, numbers, letters,  
18 punctuation marks, charts, diagrams, tables, or any other constituent part of the Planning  
19 Code that are explicitly shown in this legislation as additions, deletions, Board amendment  
20 additions, and Board amendment deletions in accordance with the "Note" that appears under  
21 the official title of the legislation.

22           (c) Severability. If any section, subsection, sentence, clause, phrase, or word of  
23 this ordinance is for any reason held to be invalid or unconstitutional by a decision of any  
24 court of competent jurisdiction, such decision shall not affect the validity of the remaining  
25 portions of the ordinance. The Board of Supervisors hereby declares that it would have

1 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and  
2 word not declared invalid or unconstitutional without regard to whether any other portion of  
3 this ordinance would be subsequently declared invalid or unconstitutional.

4 (d) Undertaking for the General Welfare. In enacting and implementing this  
5 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
6 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
7 is liable in money damages to any person who claims that such breach proximately caused  
8 injury.

9 (e) No Conflict with State or Federal Law. Nothing in this ordinance shall be  
10 interpreted or applied so as to create any requirement, power, or duty in conflict with any  
11 federal or state law.

12 APPROVED AS TO FORM:  
13 DENNIS J. HERRERA, City Attorney

14 By: \_\_\_\_\_  
15 VICTORIA WONG  
16 Deputy City Attorney  
17 n:\legana\as2013\1300446\00856424.doc

## San Francisco Police Department Report to the Planning Department on Medicinal Cannabis Dispensaries

The San Francisco Planning Department requested the San Francisco Police Department provide a report on each permitted Medicinal Cannabis Dispensary (MCD) located in San Francisco pursuant to ordinance # 130734.

Planning Department records indicate there are twenty nine permitted MCD's located in San Francisco within eight of the ten San Francisco police districts. The number of MCD's in the police districts varies from one to eleven. Southern contains the most, eleven, while Central, Richmond and Park each have one. Bayview and Tenderloin are the two police districts that do not currently have a permitted MCD located within their boundaries.

The following chart identifies the MCD, the Police District it is located within and the total number MCD's by Police District.

SF Permitted MCD's	Address	Police Dist.
Wellness Solutions	212 California	Central
Seventy Second Street	70-2nd St	Southern
San Francisco Med Cannabis Clinic	122 10th St.	Southern
Green Cross	230-11th St	Southern
San Francisco Foundation on Going Green	211 12th St	Southern
Igzaactly Health Center	527 Howard St	Southern
Green Door, the	843 Howard St.	Southern
Bloom Room	471 Jessie St	Southern
Barbary Coast Collective	952 Mission	Southern
SPARC	1256-1258 Mission	Southern
Re-leaf Herbal	1284 Mission	Southern
Ketama Collective	14 Valencia	Southern
Love Shack	502 14th St	Mission
The Apothecary	2095 Market	Mission
Med Thrive Co-op	1933 Mission	Mission
Shambala Healing Center	2441 Mission	Mission
Purple Star MCD Collective	2522 Mission	Mission
Valencia Street Caregivers	208 Valencia St.	Mission
Good Fellows Cannabis Club	473 Haight St.	Northern
Grass Roots	1077 Post	Northern
BASA	1328 Grove St.	Park
Hemp Center (aka Patient Place)	4811 Geary Blvd.	Richmond
Bernal Heights Collective	33-29th St.	Ingleside
Mission Herbal Care	3139 Mission	Ingleside
The Green Cross	4218 Mission	Ingleside
Tree-Med, Inc	5234 Mission St	Ingleside
Mission Organic Center	5258 Mission	Ingleside
Waterfall Wellness Cooperative	1545 Ocean Ave	Taraval
1944 Ocean Dispensary	1944 Ocean	Taraval
<b>Total MCDs by Police District</b>		
Southern	11	
Mission	6	
Ingleside	5	
Northern	2	
Taraval	2	
Park	1	
Richmond	1	
Central	1	
<b>Total</b>	<b>29</b>	

The following questions were developed by the Planning Department in an effort to obtain information required for a report to the Board of Supervisors. These questions were provided to the Commanding Officer of each Police District in which an MCD is currently located.

- a. What are your general observations of the MCD?
- b. Have you had any interaction (positive or negative) with the MCD(s) in your District? If so, please describe.
- c. Are you aware of any crime directly associated with the MCD?
- d. Are you aware of any community concerns directly associated with the MCD?
- e. Have you observed any "best practices" by an MCD in you District?

The District Station Commanding Officers, or their designees, responded to these questions as follows:

### Central District, Captain Garrett Tom

1. Wellness Solutions, 212 California Street.
  - a. The MCD is located in the financial district on the northern side of California Street just a few feet west of Front Street. It is located next to a financial institution and nearby restaurants. The outer appearance is clean and no loiterers were observed in the immediate area.
  - b. The MCD does not appear to be operational and according to Officer Steve Mathias (Permit Officer, Central Station) a permit has been requested to establish an MCD at this location.
  - c. At present, the location is being used as an illegal after hours night club in violation of state alcohol laws, state fire codes and Entertainment Commission ordinances. The noted illegal nightclub does not appear to be associated with the MCD applicant Tony Kim.
  - d. There are eight businesses in the immediate area that oppose the establishment of an MCD at 212 California Street. One of the businesses is a language school that teaches languages to children as young as twelve years old. The director of the school would like to maintain a drug free area and remain culturally sensitive to various students who attend their school. The language school is located 592 feet from the Halleck Alley entrance and 700 feet from the California Street entrance to the MCD location.
  - e. Because the MCD does not appear to be operational and there are no other MCD's of note in the Central District, no "best practices" have been observed.

## Southern District, Captain Michael Redmond

1. Seventy Second Street, 70-2<sup>nd</sup> St.
  - a. This MCD is a corner store front that has the windows clouded out to prevent people from looking in. There is plenty of signage outside. Over the last year there have been minimal calls for service.
  - b. I have had no interaction with this MCD.
  - c. I am not aware of any crime directly associated with this MCD.
  - d. I have not received any community concerns directly associated with this MCD.
  - e. I have not observed any "best practices by this MCD.
  
2. SF Medical Cannabis Clinic, 122 10<sup>th</sup> St.
  - a. The exterior of this MCD is very weathered. We have received minimal calls for service over the last year on this club.
  - b. I have had no interaction with this MCD.
  - c. I am not aware of any crime directly associated with this MCD.
  - d. I have not received any community concerns directly associated with this MCD.
  - e. I have not observed any "best practices by this MCD.
  
3. Green Cross, 230 11<sup>th</sup> St.
  - a. This club appears closed.
  - b. I have had no interaction with this MCD.
  - c. I am not aware of any crime directly associated with this MCD.
  - d. I have not received any community concerns directly associated with this MCD.
  - e. I have not observed any "best practices by this MCD.
  
4. San Francisco Foundation on Going Green, 211 12<sup>th</sup> St
  - a. This MCD appears that it could be closed. It appears that the Gas Lamp coffee shop has taken the area where this MCD was located. The MCD could be operating on an inside floor. There appears to be no street level entrance except maybe through 2 garage roll up doors.
  - b. I have had no interaction with this MCD.
  - c. I am not aware of any crime directly associated with this MCD.

- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

5. Igzactly Health Center, 527 Howard

- a. The MCD is a street level store front. No issues seen and minimal calls this year.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

6. The Green Door, 843 Howard

- a. We have received the most calls for service to this MCD over the last year. There were 17 total calls this year. The majority of the calls have been traffic related. The outside is clean with plenty of signage.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

7. Bloom Room, 471 Jessie

- a. There is signage in front and appears clean. The Mid Market Foot Beat officers say they have security on site when open. We have received minimal calls for service.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

8. Barbary Coast Collective, 952 Mission

- a. The front area of the MCD appears clean and has signage. Over the last year we have had minimal calls related to the MCD.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

9. SPARC, 1256-1258 Mission St.

- a. The front area of the MCD appears clean and has signage. Over the last year we have had minimal calls related to the MCD.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

10. Re-Leaf Herbal, 1284 Mission St

- a. The front area of the MCD appears clean and has signage. Over the last year we have had minimal calls related to the MCD.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

11. Ketama Collective, 14 Valencia

- a. The front area of the MCD appears clean and has signage. Over the last year we have had minimal calls related to the MCD.
- b. I have had no interaction with this MCD.
- c. I am not aware of any crime directly associated with this MCD.
- d. I have not received any community concerns directly associated with this MCD.
- e. I have not observed any "best practices" by this MCD.

## Mission District, Captain Robert Moser

1. Love Shack, 502 14<sup>th</sup> St.
  2. The Apothecary, 2095 Market St.
  3. Med Thrive Co-op, 1933 Mission St.
  4. Shambala Healing Center, 2441 Mission St.
  5. Purple Star MCD Collective, 2522 Mission
  6. Valencia Street Caregivers, 208 Valencia
- 
- a. The Mission District has six permitted MCDs. We have very little interactions with these facilities and they do not generate a large number of calls for service. However, given the nature of their business, (large amounts of cash and narcotics) they are attractive targets for armed robbers.
  - b. I have not had any interactions with the MCDs in my district.
  - c. In August of this year, Purple Star MD Collective was the victim of an armed, take over robbery. Purple Star was relatively new at that time and their security was poor.
  - d. I am not aware of any community concerns regarding the MCDs in the Mission.
  - e. MCDs in general should employ good security practices such as buzzer operated front gates, locked inventory, quality surveillance systems and the use of guards/doormen.

## Northern District, Captain Greg McEachern

1. Grass Roots, 1077 Post St.
- 
- a. Grass Roots dispensary has been operating in the Northern District for over ten years. The store front of Grass Roots is maintained very well and the surrounding areas are kept very clean. All the appropriate permits are posted inside and the management was very receptive to my visit.
  - b. I have not had any negative interactions with Grass Roots dispensary. I never handled any calls for service at this location or have heard any complaints from officers in regards to Grass Roots dispensary.
  - c. I ran a search query of incident reports relating to Grass Roots and did not find any reports in regards to Grass Roots for over a year. I also checked level two and did not find any calls for service that were associated with Grass Roots.
  - d. I spoke with David Villa Lobos from the Community Leadership Alliance. David told me that Grass Roots is operated very well. He stated that Grass Roots is a very low key operation and he has not heard any complaints from the community.

- e. From my observations, The Grass Roots dispensary is operated very well. They have a security guard posted inside the entry way which is secured by two locked doors. The guard checks the patient's medicinal marijuana card before allowing them entry through a second locked door. The interior of the dispensary is very clean and there were approximately six employees working. The front of the location is kept clean and the guard does not allow people to illegally park in front. Grass Roots also contracts' with a SF Patrol Special to provide additional security in the evening to assist.

2. Good Fellows Smoke Shop, 473 Haight St.

- a. Good Fellows Smoke Shop has been operating in the Northern District for several years. Good Fellows Smoke shop is a traditional smoke shop that sells smoking paraphernalia in the front part of the store. The rear of the store is designated as the Cannabis dispensary. The exterior of the business is free of litter and graffiti. All the appropriate permits are posted inside and the owner was very receptive to my visit.
- b. I have not had any negative interactions with Good Fellows Smoke shop. I've never handled any calls for service at this location or have heard any complaints from officers in regards to Good Fellows Smoke Shop.
- c. I ran a search query of incident reports relating to the dispensary and did not find any reports in regards to The Good Fellows for over a year. I also checked level two and did not find any calls for service that were associated with Good Fellows.
- d. I attempted to contact a member of the local Haight Street community group. I have not received a response from the community group.
- e. From my observations, The Good Fellows operates as a smoke shop with a cannabis dispensary in the rear of the store. There are only two employees on the premise at any given time. The dispensary is separated by a door which is buzzed by an employee from the front of the store. Patient's marijuana cards are checked before they are allowed to enter the dispensary. There is no additional security on the premise.

## Park District, Captain Greg Corrales

1. Bay Area Safe Alternatives Collective (BASA), 1326 Grove Street
  - a. On previous occasions I have responded and met with the manager in regards to the constant loitering of individuals near the dispensary. The dispensary shares a parking lot with Da'Pitt BBQ, which was a known hangout for the CDP Gang. In January of 2013 the SFDPH suspended the operating license of Da'Pitt BBQ. Since the license suspension of Da'Pitt, there have been no subjects loitering outside of BASA. The parking lot is now solely used by BASA as parking for their customers. In the evenings local residents use the secured parking lot for overnight parking. On the exterior BASA has several surveillance cameras pointed at the parking lot and the front entrance. Upon entry I observed the door is reinforced by a metal gate and is always locked. The windows have bars inside as well. Entry can only be gained by doorbell and buzzer. Inside there are several more surveillance cameras pointed at the dispensary counter and front door. I observed all employees wear an alarm remote around their neck in case of emergencies.
  - b. Since the closure of Da'Pitt BBQ, I have had minimal interaction with BASA. In regards to complaint by their neighbors, I have received none. Per the manager, they pay attention to what their patrons can cause to the area. They seldom have issues with parking since they provide free parking for their patrons. I was told that patrons of BASA come and purchase what they need and soon leave the area.
  - c. I am not aware of any crime directly associated with the MCD.
  - d. Since the MCD is located in a very vocal neighborhood, the NOPA neighborhood. I have not heard any complaints about BASA.
  - e. In regards to BASA, the staff is trained to pay attention to the area both inside and out in order to keep a good relationship with their neighbors.

## Richmond District, Captain Sharon Ferrigno

1. The Hemp Center, 4811 Geary Boulevard.
  - a. The MCD is on one of the busiest corridors in the Richmond District. The entire business, including the front door and all of the windows, is enclosed within a giant metal cage. Signs in front of the business ask for the members to be courteous to neighbors and not to smoke outside, loiter, or double park their vehicles. The interior is spacious with a Jamaican theme including Jamaican artwork and Jamaican music playing. They offer movies for patients as well. Only members are allowed inside the premises, however, membership is free.
  - b. I have had very limited interaction with this MCD, however, I have visited a few times and the staff has always been polite and non-evasive when answering my questions.
  - c. Crime directly associated with the MCD, case #101-075-481, Robbery with a gun on 11/19/10 and case #110-165-536, Petty Theft on 02/24/11.
  - d. No.
  - e. No. However, it has the following code of conduct:

### MEMBERSHIP CODE OF CONDUCT:

1. Minors should not be brought into the dispensary, unless they are valid patients accompanied by their legal guardian caregiver.
2. For the security and privacy of all patients in the dispensary, no cell phone use is permitted within the facility.
3. Photographs, videotaping, and any other recording device are not allowed within the facility without prior permission.
4. No alcohol, tobacco, or illegal drugs
5. No smoking of cannabis allowed outside the premises of the facility (Within 50 Feet) or surrounding neighborhood, as per city ordinance and as a courtesy to our neighbors.
6. Be respectful of the neighboring businesses: please do not block driveways or loiter.
7. No offensive or harassing behavior to staff and/or members is allowed.
8. No drug dealing
9. No sales to anyone under the influence of alcohol.

## Ingleside District, Captain Timothy Falvey

There are currently five (5) Medicinal Cannabis Dispensaries (MCD) located within the Ingleside Police District. Additionally, there are four more proposed MCD locations within the District currently awaiting approval from the Planning Department.

### 1. Bernal Heights Collective, 33 29<sup>th</sup> Street

- a. I responded out and met the on duty manager. Upon entering, there was a gate inside the lobby with a person checking for identification/membership. This MCD is off of the main business corridor (Mission Street) by about a half of a block. There are signs posted on the front window advising members of complaints from neighbors about people distributing their marijuana to people outside. The sign warned that their membership would be revoked if they were found to be furnishing marijuana to non-members. Once inside, the area is fairly open with couches for sitting. The on duty manager told me that they have about 15,000 members.
- b. I have had very little interaction with the Bernal Heights Collective at all. I can't recall hearing any complaints about this business. I asked the on duty manager about any policies they have that may contribute to the low level of calls for service. He advised that they keep an eye on the front of the business to ensure there is no double-parking and that they have good communication with their neighbors. The neighbors typically come to them first with problems.
- c. Not with the Bernal Heights Collective.
- d. I do not recall any complaints about the Bernal Heights Collective.
- e. I spoke with the on duty manager and asked if there were any specific practices there that kept the public complaints low. He said that they have good relationships with the neighbors but could not think of any policy in particular.

### 2. Mission Herbal Care, 3139 Mission Street

- a. This MCD is a delivery only model. It is a small business attached to a chiropractor office.
- b. I have passed by and saw a sign that read the store was closed due to Federal Government pressure. In fact, Sgt. Chambers responded out and confirmed it is a delivery only business. As such, there have been no complaints from neighbors or other merchants about this location.
- c. Thus far, no. If there were any crimes involving the delivery personnel being robbed it may have been reported in another district, but I am unaware of any such incidents.

- d. Again, as a delivery only model, I have not heard any complaints from this MCD.
- e. As a delivery only model, this MCD does not generate the types of complaints or concerns that I hear of in relation to other MCDs. I believe the delivery model, if at least a part of an MCD, addresses many of the concerns people have about accessibility to medicinal cannabis. Requiring delivery service is a part of any MCD could help to alleviate any "clustering" of dispensaries by providing alternatives to having more MCDs in an area.

### 3. The Green Cross, 4218 Mission Street

- a. The Green Cross has recently opened up the retail component of their facility. It is clean, well lit and well run. As part of the security plan we insisted upon, there being high definition video cameras in and about the property. The area in front is kept clean. The owner has a residence upstairs from the MCD. Upon entering The Green Cross, one enters a lobby where their identification is checked against their membership. One is then allowed into a gated room where they may make purchases. There is a security room behind a two way mirror. In that room are several monitors connected to the numerous video cameras. The edible products (brownies, etc.) are prepared upstairs in the residence's kitchen, along with packaging of delivery orders. The staff is very engaged with the community, and they have joined at least one neighborhood association. Prior to the opening of the retail space, they operated as a delivery only business at this location.
- b. My interactions with the Green Cross staff have been positive, thus far. They brought us in for a tour, prior to being open to the public, so that we could see their protocols, procedures, and display their security measures. I have seen them at the last five or six meetings of the Excelsior District Improvement Association (EDIA) and at other neighborhood events.
- c. No.
- d. I did hear concerns from some neighborhood groups, prior to the opening of the retail portion of the Green Cross, about potential parking and traffic concerns and if there would be a "bad element" brought into the neighborhood. Thus far, I have not seen any of these issues become a problem. A large part of their business is still based upon delivery. I recently heard a complaint from a woman who lives in an adjacent building that there is a strong odor of marijuana coming from the building. I don't know if this is the result of the baking process in preparing the edibles or the people living upstairs smoking in their

residence, or if it is just the smell of marijuana in such large amounts with windows open. We will continue to follow up on this issue.

- e. Have you observed any “best practices” by an MCD in your District? I believe the Green Cross’ delivery service is a “best practice” that reduces some of the potential parking, traffic, and loitering concerns neighbors have had. Requiring that there be a delivery service available at MCDs would reduce the traffic issues, parking complaints, and may reduce loitering near MCDs. It would also reduce the need for MCDs in so many places, as the accessibility issues for the less mobile would be addressed. If MCDs are going to provide edibles, proper HVAC requirements should be introduced to keep the smell of the marijuana from being unreasonably strong in a community.

#### 4. Tree Med, 5234 Mission Street

- a. This is a MCD that opened about 3 months ago. It is brand new, clean, and well lit. It is approximately five doors away from Mission Organics (5258 Mission Street). Its design is similar to others in the area. There is a small lobby with a security person to buzz people in to the area where the marijuana is sold. There are also numerous video cameras installed as part of the security plan required by the Police Department in the permitting process.
- b. I went in for a tour on their opening day. I have seen their attorney at a few meetings (Brendan Hallinan). The encounters have been professional.
- c. Tree Med was the second MCD to open on the same block. There has been numerous community concerns related to the other (Mission Organics). Since this MCD opened after the other issues were started, I can’t say that it is directly associated with Tree Med.
- d. Yes. Before it ever opened, neighbors were complaining that the owners were violating their building permits and I believe at one point they were red tagged. A community group in the area, The Outer Mission Merchants and Residents Association (OMMRA) vehemently opposed the allowing of a second MCD on the same block. It should be noted that a third MCD is attempting to open across the street from Tree Med and Mission Organics. Additionally, several local merchants called for a meeting with me, Supervisor Avalos, and the local merchants. They were very upset with some of the behavior of MCD customers in the neighborhood and were upset at the pending opening of a second MCD on the same block. There have been regular meetings since then, but Tree Med personnel have not always shown up. The community concerns have to deal with vehicles double parking in the neighborhood, especially on Mission Street (a major

transit hub), MCD customers using the parking lots of local businesses (thus denying the local merchant's clients the opportunity to park there), people loitering out in front of the MCDs, people smoking the marijuana in cars parked in front of the business and then driving away under the influence, patients purchasing medicinal cannabis and sharing it with their friends or selling it out in front, and with people walking into the surrounding neighborhoods and smoking marijuana in cars there or on the steps of abandoned homes in the area. These are concerns the community had before Tree Med opened based upon issues that came up after Mission Organics opened up the street. Another issue I have heard brought up was that the owner of Tree Med was going to have her son manage the store. Neighbors opposed claiming he is a convicted felon and is not allowed to manage a MCD. The owner stated her son would not be involved in the operation of the MCD. Per two neighborhood groups, the son is now managing the shop and they have filed a complaint with the Department of Public Health.

- e. Still too new to see if they have a best practice.

#### 5. Mission Organics, 5258 Mission Street

- a. The Mission Organics staff members have done considerable outreach to address community concerns, which are listed below. In dealing with some management, they at times seem defensive. If I mention a concern or issue they want to see data and start asking questions that make me feel like I am testifying on the stand. They are engaged in the community as members of the Cayuga Improvement Association (CIA).
- b. I have attended several meetings with merchants on the 5200 block of Mission Street to hear their concerns about the MCDs. Mission Organics staff members have been at the meetings and actively work with the community to address concerns. Overall, a positive impression.
- c. On April 4, 2013, I attended a meeting on the 5200 block of Mission Street to hear the concerns of merchants in the area. Supervisor Avalos also attended the meeting. Merchants from that block complained about several issues. Mission Organics reportedly has 15,000 members. Some complained about rude young people ("thugs") coming to the neighborhood and double parking along the block while going into Mission Organics (Mission Street is a very busy bus route). Some complained that Mission Organics customers were using their parking lots, thus denying that merchant's own clients use of the parking lot. When the owner of a restaurant asked a Mission

Organics customer to move their car out of her lot, he told her to "Fuck off". Merchants complained that there was a criminal element loitering in front of their businesses while waiting for their friends to buy medical cannabis. When they would ask the loitering people to move away from their business, they were sworn at and felt intimidated by the suspicious people. One merchant said he was considering closing after 31 years because his clients were afraid to walk into their store because of the people loitering in front. They complained that people would come out of Mission Organics, get into their vehicle, smoke their marijuana right away, and then drive away (presumably now under the influence of marijuana). Others from the neighborhood complained how some customers from Mission Organics would join up with their friends (those who had been loitering in front of the other businesses), would walk into the surrounding neighborhood, and smoke marijuana together in cars or on driveway or front steps of homes on the block. I also heard many complaints that the MDC customers were frequently seen immediately opening their marijuana and either giving it or selling it to their friends or people outside. Some have complained that they don't think the people going in to buy medical cannabis have any ailment at all and wanted stricter controls on who should receive a medical recommendation for cannabis. I had not heard these complaints before and asked when they called the police. They said, "Oh, we haven't called the police about this."

I surveyed the neighborhood, myself. At an abandoned house on Niagara Street, I found over thirty of the Mission Organics bottle labels peeled off of the marijuana container and stuck to the handrail of the house, right where the neighbors had complained of people smoking marijuana. In fact, there were three people on the steps when I walked up to the house. One had the recommendation with him and appeared to be about to split the marijuana with his friends. One of them had his infant daughter asleep in the car that he had just parked across the driveway entrance to the house. I responded by extending the "3H45" footbeat beyond the Geneva Avenue boundary to include the 5200 block of Mission Street. I assigned a sergeant the task of making the double parking, loitering, distribution, smoking, and other issues go away. The sergeant and the plain clothes units responded and brought some relief to the neighborhood. The neighborhood's concerns were heightened by the knowledge that a second MCD was under construction and about to be opened five doors away (Tree Med). Mission Organics responded by posting rules inside warning customers that they would lose their membership if they were seen doing any of the things above. Mission organics hired and paid for a

security guard to watch the parking lot of the restaurant mentioned above. They assigned a "community liaison" and asked that the neighbors call them and they would send their security guard out to address the issues. I pointed out that the security guard is not allowed to "patrol". Mission Organics did maintain the "hotline" in order to address issues from neighbors. It is my understanding that scores of people had their membership cancelled for rules violations.

- d. See C above. Additionally, there are concerns that people are in the store after the hours of operation. Some expressed concerns that there is a third MCD applying to open across the street from Mission Organics and Tree Med. One complaint I heard from was more of a general complaint about MCDs in general. Some stated that they believe many of the customers are healthy and are just "gaming" a system designed to help sick people. They asked what I could do to better regulate the recommendation process. I advised that this was not an area the police would have any say, but if we are looking for legislative recommendations, this was a concern I have heard more than once.
- e. The community hotline established, along with the hiring of a "community liaison" were both helpful. It does seem self serving though. The management at the MCD wants to be called first, which can alleviate some of the calls for service associated with MCDs, but then diminishes the ability of the SFPD or other City Agencies to accurately track the impact MCDs are having in an area. I have encouraged people to continue to call the police for criminal acts (smoking marijuana and driving, distribution, loitering).

MCDs in General: Some of the other issues to consider for the impact of MCDs on neighborhoods include;

- MCDs are largely a cash only business. Banks will not allow the use of credit cards or ATM cards when they are aware the transaction is for marijuana (medical or otherwise). Therefore, due to the large amounts of currency and cannabis, the SFPD should continue to insist on approval of any security plan, to mitigate the higher robbery threat.
- A consistent concern, as was evidenced at Mission Organics, is the loitering near an MCD. People have expressed concerns that they are trying to get customers to go in and buy marijuana for them. There should be strict anti-loitering provisions to address these community concerns. This is very similar to the concerns about minors loitering around liquor stores trying to get someone to buy them alcohol. The other option is to charge MCD clients with felonies for furnishing marijuana.

- Another concern I have heard, although not specific to any one MCD, is where is the marijuana coming from? The concern was; is there a way to legislate that the source of the marijuana is certified to not be from a “grow” in a residential neighborhood. The SFFD should be able to provide ample evidence of the fire dangers in residential neighborhoods caused by marijuana growing operations. PG & E can probably provide estimates as the theft of utility services by these operations.
- To address a previously listed concern (that a convicted felon was operating an MDC), legislation should require a criminal background check of anyone operating or working at an MCD. MDC advocates frequently refer to the number of Walgreens in the City when countering anti-clustering legislation. If they are similar to a Walgreens in this capacity, their employees should be required to be bonded and have a background check similar to any pharmacist dispensing prescribed medications.
- MCDs with delivery services can provide access to medicinal cannabis without having to place throughout the whole city and reduce the number of MCDs needed city-wide.

### Taraval District, Captain Curtis Lum

#### 1. Waterfall Wellness Cooperative, 1545 Ocean Ave

- a. There is a security guard posted. Officers have observed clients double parking outside the locations and parking in nearby red zones. People do not hang out in the front. Officers do not have many calls for service or problems at this location at this time.
- b. Calls for Service between September 2012 to September 2013: One A priority call for service, 913, a civil dispute between employees.
- c. No.
- d. Officers believe that the residents are not happy about the MCDs in their neighborhood.
- e. Officers believe that having the security guard at the door could be considered a best practice.

#### 2. 1944 Ocean Dispensary, 1944 Ocean Ave

- a. There is a security guard posted. Officers have observed clients double parking outside the locations and parking in nearby red zones.

People do not hang out in the front. Officers do not have many calls for service or problems at this location at this time.

- b. Calls for Service- between September 2012 to September 2013: C priority 418 (dispute) over belongings.
- c. No.
- d. Officers believe that the residents are not happy about the MCDs in their neighborhood.
- e. Officers believe that having the security guard at the door could be considered a best practice.

General Information: About 3 years ago, before I was assigned here, an MCD wanted to open in a more residential area, I think it was on Taraval St. The community was against it and spoke out against it.

Dear Mr. Aaron Starr,

Thank you for attending our medical cannabis working group at City Hall. We appreciate your outreach efforts and the opportunity to have input into the department review of medical cannabis policy in our city.

Hopefully, this letter will clarify many of the concerns raised by the stakeholders at our meeting, as well as offer some useful suggestions for the planning department to consider as it develops recommendations for changes in our law.

1) Expand Greenzone

We support the findings of the medical cannabis taskforce final committee reports. If you would like a copy of the final committee report, email [Medicalcannabistaskforce@sfgov.org](mailto:Medicalcannabistaskforce@sfgov.org). All committees voted in support of the expanding of the Greenzone as a remedy to clustering and perceived saturation.

We do not support saturation as a condition to which a permit can be denied, in any district, without any solid research into each districts patients needs for affordability, variety of strains, and patients having choices of providers.

\*specific recommendations\*

Add MCDs as an allowed use in all neighborhood commercial districts. Adopt state law 600 ft. from 1,000 ft. (with transparency to applicant that they may be at an increased risk for federal targeting).

2) Protect MCDs from sensitive uses moving within our safety zone and exposing the MCDs to federal zoning restrictions.

Once the zoning has been approved for a MCDs, permits being granted for sensitive uses within 1000 ft., such as daycares, should be considered federally deemed sensitive use "coming to the nuisance" and not allowed.

3) Prioritize the re-establishment of federally shuttered MCDs that offered compassionate services and provided community benefits to their host neighborhoods, as brick n mortar MDCs.

Specific recommendations\*

Expedite processing, fee waivers, building variances and equitable facilitations, waivers of new construction standards placed on new MDCs.

#### 4) Update definition of MCDs

Currently, a MCD is defined as ten or more patients. This does not fit the scope/scale of an even small medical cannabis business and is punitive to low-income patient groups, who are not engaged in a retail business. The definition should reflect and fit the actual use. San Francisco should adopt the state definition, which defines a MCD as a retail business, either brick n mortar or mobile/delivery.

#### 5) Prioritize underserved neighborhoods

There are vast areas of our city with no public, city permitted MCDs where thousands of patients, many of which suffer from chronic pain and mobility barriers live. This is a disabled access concern.

In the heart of the Tenderloin, where the largest population of people living with AIDS, veterans and disabled on a fixed income live, all MDCs were federally closed.

The Hunters Point/Bay View and entire west side of the city have never had local, legal safe access. We encourage a pro-active approach from city departments to work with patient advocates to establish safe access centers in every district and neighborhood.

6) Prevent hostile takeovers via loopholes in establishment of land use. A noticed public hearing, if there's a change of operating collective, meaning the listed and criminal background checked, approved by PUBLIC hearing and neighborhood vetting to an entirely new medical cannabis business. To assess patient and neighborhood approval of new businesses security, traffic, and true community benefit, and to eliminate and assess any hostile takeover claims to protect public safety.

#### 7) Fair distribution of medical cannabis

Low-income and no income patients are blocked from safe access because they cannot afford market rate medical cannabis.

Distribution of needed, non-toxic pain relief and life saving medicines should not be based on ability to purchase, that's unfair. Our historic placement as the heart of our nation's medical cannabis laws came from the AIDS crisis, to lock the city's gates on the patients most in need and to put these patients needs as marginal concern to reforms in our current policy is unacceptable.

\*recommendations\*

Set a standard of care for city permitted MDCs for low-income patients.

Adopt the 2007 resolution by Mirkarimi as binding law with an additional 25% discount to verifiable low-income veterans.

Implement voter passed Prop S, city cultivating gardens for sliding scale to free medicine for low-income hospice care (Ward 86/Laguna Honda), veterans and disabled city residents who cannot afford market rate cannabis.

Reward the MCDs that have voluntarily provided not only compassion but services to vulnerable and impoverished populations of San Francisco. These MCDs deserve local tax credits for their selfless effort that increased public health and safety for all SF residents.

In closing, we would recommend that the city departments prepare for the passage of a voter ballot in 2014 which will allow for adult use cafes and taxes on adult use cannabis. We recommend relieving the medical cannabis taxes locally once the state law goes into effect and have local adult use taxes support needed low-income medical cannabis patients programs that are urgently needed.

San Francisco Safe Access Patient Profile  
*Americans for Safe Access, San Francisco Chapter*

**Overview:**

Medical Cannabis laws in the state of California are designed to protect the anonymity of medical cannabis patients. It remains one of the only medical cannabis states that do not require its residents to register their patient status with the government. To learn more about patients visiting San Francisco Medical Cannabis Dispensaries (MCDs) the San Francisco chapter of Americans for Safe Access has designed and administered a survey.

The aim of our survey was to better understand San Francisco patient purchasing habits. We have gained information on how far patients travel, how much time they spend during their visits and how frequently they visit dispensaries. We now know that 48.49% of our SF respondents travel an average distance of 3 or more miles to their MCD of choice. We know that navigating even a relatively short distance of three or four miles can become a costly and time consuming task in the city of San Francisco. Nearly one third of SF respondents (32.94%) rely public transportation to travel, while another large chunk (23.95%) travel by car. This indicates that at least 56.8% of San Francisco respondents do not live within walking distance of an MCD. 61.74% of our SF Respondents make a trip to an MCD every other day and 86.44% make less than \$60,000 annually. These figures combined paint a picture of San Francisco patients with a great need for expanded access to cannabis.

In the wake of debate in San Francisco as to where MCD's should be located, we must keep these figures in mind. SF patients place a heavy burden on this city's public transportation and add to already congested levels of vehicle traffic. These figures are further amplified by the amount of traffic to dispensaries from the patients residing in San Francisco's surrounding areas. For example, 44.32% of those respondents make their visits to SF MCD's by car. With restricted levels of access in our surrounding areas being unlikely to change, we must keep in mind ways to accommodate more patient traffic in our SF MCD's. Patients place a burden on city infrastructures when they make trips to obtain their medicine- a burden that could be lessened by allowing MCD's in every neighborhood and/or by increasing purchase limits.

**A Note on Survey Design:**

Surveys were administered at three different MCD's located in separate areas of the city and at one Americans for Safe Access SF Chapter meeting. The participating MCD's were chosen to represent patient flows in three neighborhoods of the city: SOMA, Western Addition and the Outer Mission. Surveys are still available for completion online and at each of our participating MCD's. SF ASA intends to continue collecting data to establish a more complete and comprehensive patients profile.

Our survey includes seven questions in a multiple-choice format, with one question in a fill-in-the-blank format. The questions and answer choices can be

found attached. Patients in each MCD were randomly asked to participate and were given no reward for completing. Respondents were given the choice to skip all questions except for the very last, "What is your zip code?" We have gathered 363 responses. Of those, 302 had listed a San Francisco zip code as their place of residence while 61 listed a zip code from outside of San Francisco boundaries. A summary of these results for each group can be found listed below.

**Results:**

**SF= Respondent has listed a San Francisco Zip Code**

**NSF= Respondent has listed a Zip Code outside of San Francisco boundaries**

Question 1: On Average, how far from home do you travel to buy medicine?

	SF Total	SF %	NSF Total	NSF %
0-2 miles	85	28.43%	9	15%
3-5 miles	69	23.08%	14	23.33%
6-10 miles	91	30.43%	18	30%
10+ miles	54	18.06%	19	31.67%

**Total SF Resident Responses: 299**

**Total Non-SF Resident Responses: 60**

Question 2: How do you usually travel to obtain your medicine from MCD's? (Mark all that apply)

	SF Total	SF %	NSF Total	NSF %
On Foot	112	22.36%	13	14.77%
Bicycle	71	14.17%	3	3.41%
MUNI	86	17.17%	16	18.18%
SamTrans	10	2.00%	6	6.82%
BART	79	15.77%	10	11.36%
Car	120	23.95%	39	44.32%
Motorcycle	13	2.59%	0	0%
Taxi	10	2.00%	1	1.14%

**Total SF Resident Responses: 501**

**Total NON-SF Resident Responses: 88**

Question 3: How long would you say a trip to buy medicine usually takes you?

	SF Total	SF%	NSF Total	NSF %
<5 min	26	22.36%	5	8.33%
5-15 min	58	19.33%	12	20%
15-30 min	113	37.67%	23	38.33%
30+ min	103	34.33%	20	33.33%

**Total SF Resident Responses: 300**

**Total Non-SF Resident Responses: 6**

Question 4: How many visits have you made to an MCD in the last month?

	SF Total	SF%	NSF Total	NSF %
0-4	31	10.4%	8	13.11%
5-9	40	13.42%	12	19.67%
10-14	43	14.43%	14	22.95%
15-19	55	18.46%	2	2.94%
20-25	78	26.17%	8	13.11%
20+	51	17.11%	17	27.87%

**Total SF Resident Responses: 298**

**Total Non-SF Resident Responses: 61**

Question 5: What is your age?

	SF Total	SF%	NSF Total	NSF %
<18 YO	1	0.33%	0	0%
18-24	67	22.19%	29	47.54%
25-34	64	21.19%	13	21.31%
35-44	58	19.21%	7	11.48%
45-54	61	20.20%	5	8.20%
55-64	38	12.58%	7	11.48%
65+	13	4.30%	0	0%

**Total SF Resident Responses: 302**

**Total Non-SF Resident Responses: 61**

Question 6: What is your average annual income?

	SF Total	SF %	NSF Total	NSF %
0-39,000	131	44.41%	34	55.74%
40-59,000	124	42.03%	11	18.03%
60-79,000	22	7.46%	9	14.75%
80-99,000	8	2.71%	3	4.92%
100,000+	10	3.39%	4	6.56%

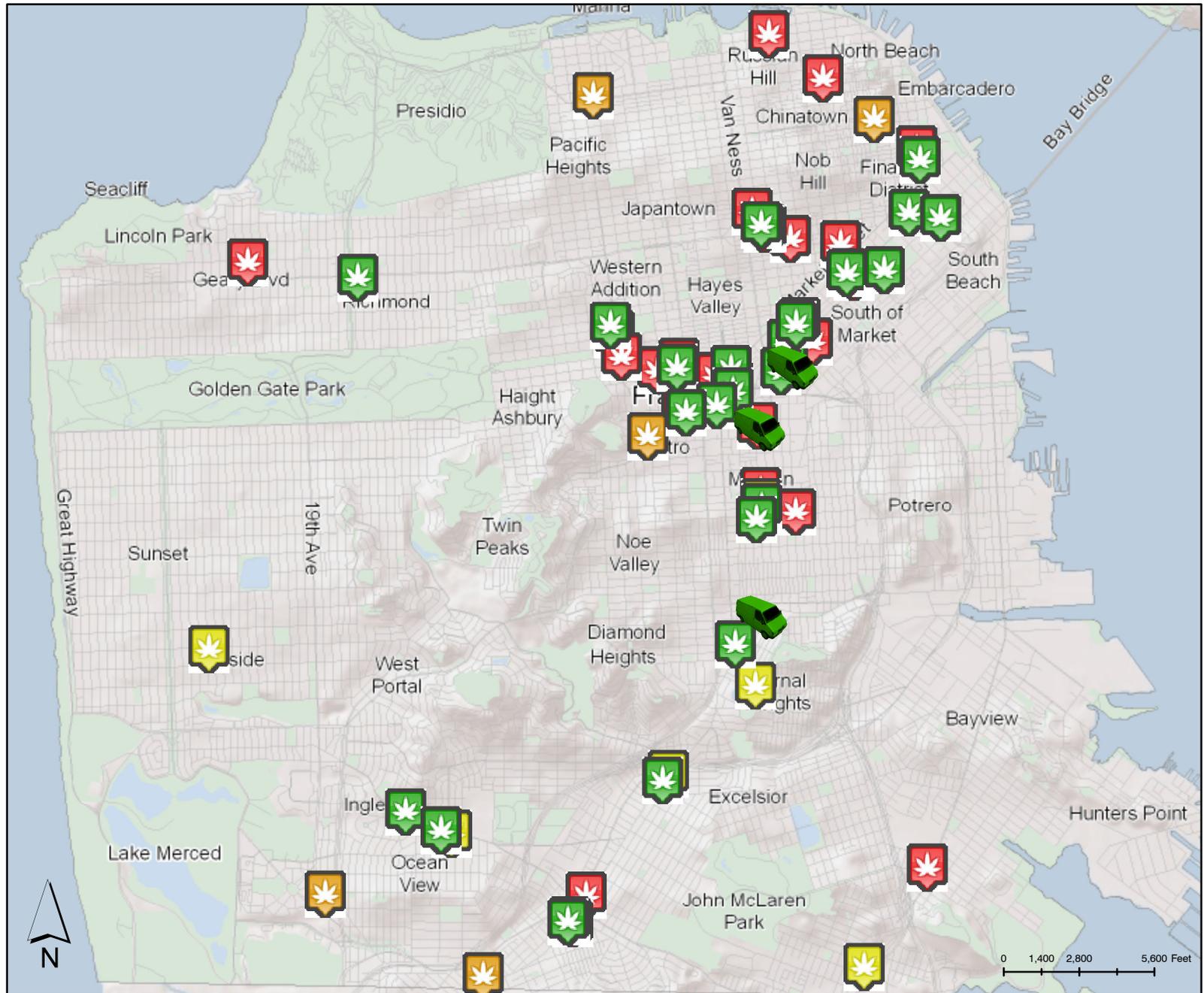
**Total SF Resident Responses: 295**

**Total Non-SF Resident Responses: 61**

# Location of Medical Cannabis Dispensaries in SF

## Legend

-  Delivery Only
-  Permitted
-  Application Pending
-  Application On Hold
-  Closed





SAN FRANCISCO  
**PLANNING**  
DEPARTMENT

# Standards for **Storefront Transparency**

PLANNING CODE REQUIREMENTS FOR  
COMMERCIAL BUSINESSES

SAN FRANCISCO PLANNING DEPARTMENT | NOVEMBER 2013



## ORGANIZATION:

This document is divided into four sections:

- **Introduction**
- **Visibility Requirements**
- **What This Means for Every Store**
- **Frequently Asked Questions**

## Introduction

The storefront is arguably the most valuable space in a store and should be used to full advantage. A transparent storefront welcomes customers inside with products and services on display, discourages crime with more “eyes on the street,” reduces energy consumption by letting in natural light, and enhances the curb appeal and value of the store and the entire neighborhood. For these reasons the San Francisco Planning Code requires that storefronts must maintain transparent windows that allow visibility into the store. This handout explains these requirements.

## Visibility Requirements

Section 145.1(c)(6) of the Planning Code requires that “frontages with active uses that are not residential or PDR must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.”

To ensure visibility into active spaces, any fenestration of active uses provided at pedestrian eye level must have visibility to the inside of the building. The following definitions apply:

- 1) **Pedestrian Eye Level** includes the space that is between 4 feet and 8 feet in height above the adjacent sidewalk level, following the slope if applicable.



ABOVE: Window signs should be limited in size and number to maximize visibility inside the store.

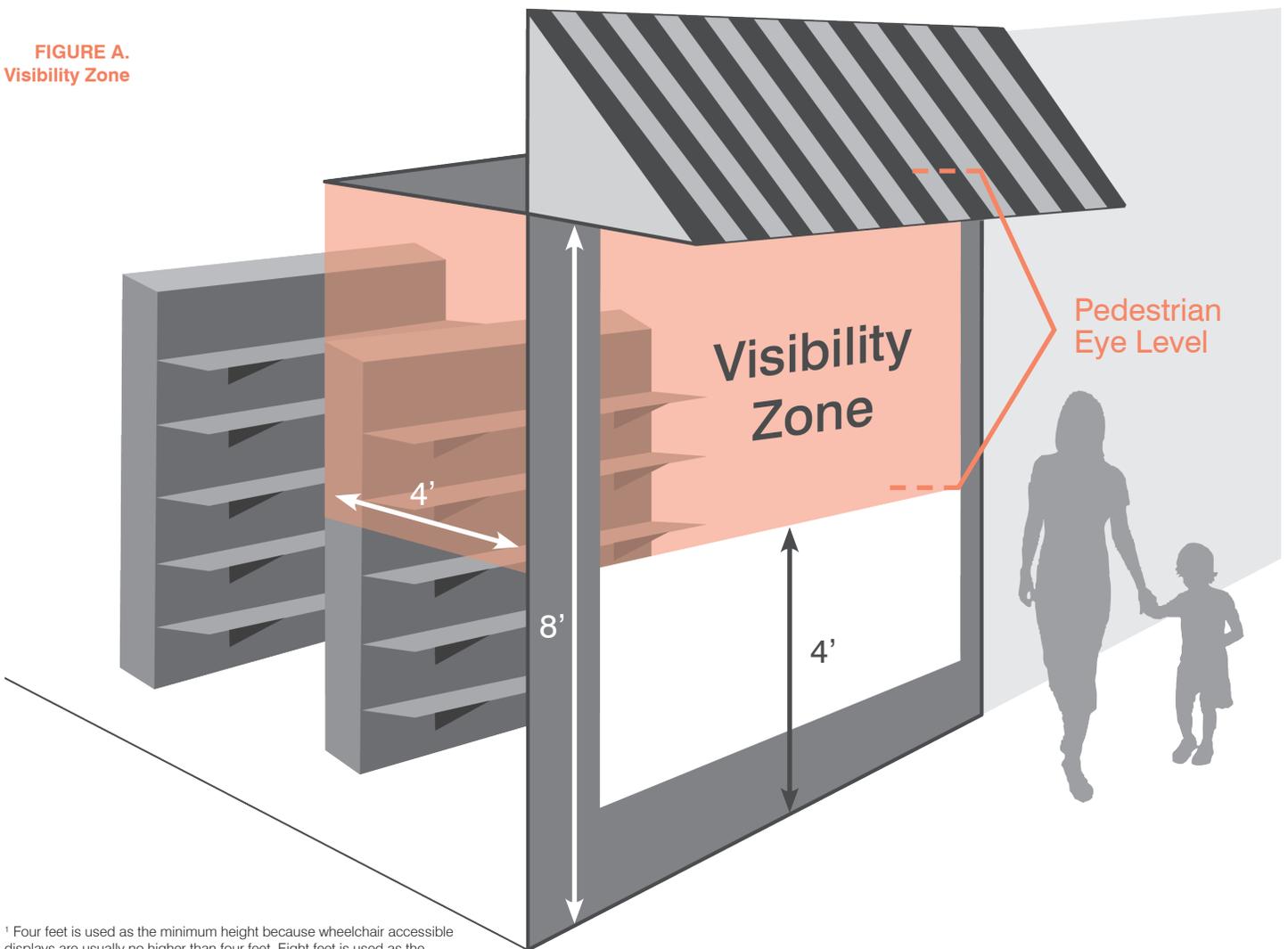
2) **Visibility to the Inside of the Building** means that the area inside the building within 4 feet from the surface of the window glass at pedestrian eye level is at least 75 percent open to perpendicular view.

Therefore, any fenestration of frontages with active uses must have visibility to the inside of the building with at least 75 percent open to perpendicular view within a 4-foot by 4-foot “visibility zone” at pedestrian eye level. This visibility zone is located between 4 feet and 8 feet in height above sidewalk level and extends 4 feet from the surface of the window glass inside the building<sup>1</sup>. Section 145.1(c)(7) of the Planning Code requires that decorative railings or grillwork placed in front of or behind the storefront windows must also

be at least 75 percent open to perpendicular view. Greater transparency, including expanded “visibility zones”, may be required in buildings designated under Article 10 or 11 of the Planning Code (see FAQs on page 6).

Notwithstanding the above visibility requirement, individual products for sale or used in service and on display inside the building are not restricted; and, window signs not exceeding 1/3 the area of the window on or in which the signs are located are not restricted if such signs are permitted by the Planning Code<sup>2</sup>. For more info about business signs, please refer to the Sign Handout on our website at [www.sfplanning.org](http://www.sfplanning.org).

**FIGURE A.**  
Visibility Zone

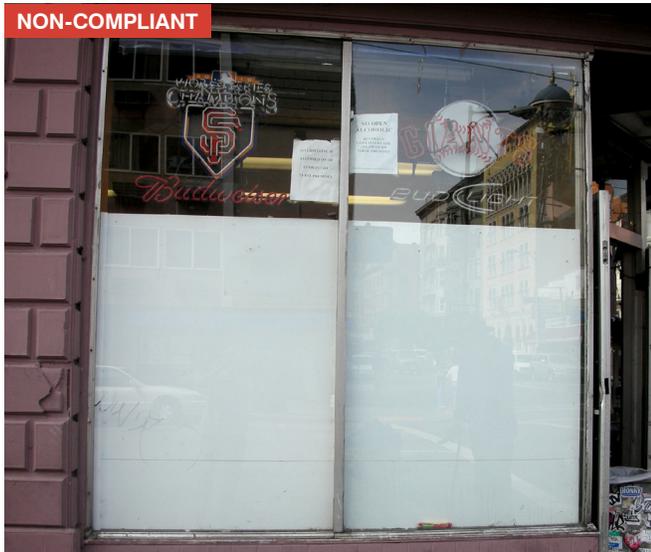


<sup>1</sup> Four feet is used as the minimum height because wheelchair accessible displays are usually no higher than four feet. Eight feet is used as the maximum height because overhead awnings must maintain an eight-foot clearance above the sidewalk. Four feet is used as the minimum depth because it allows the minimum three-foot path of travel required for wheelchairs plus additional space for a display. Seventy-five percent openness is used because it matches the existing required openness for security gates and grillwork in Section 145.1(c)(7) of the Planning Code.

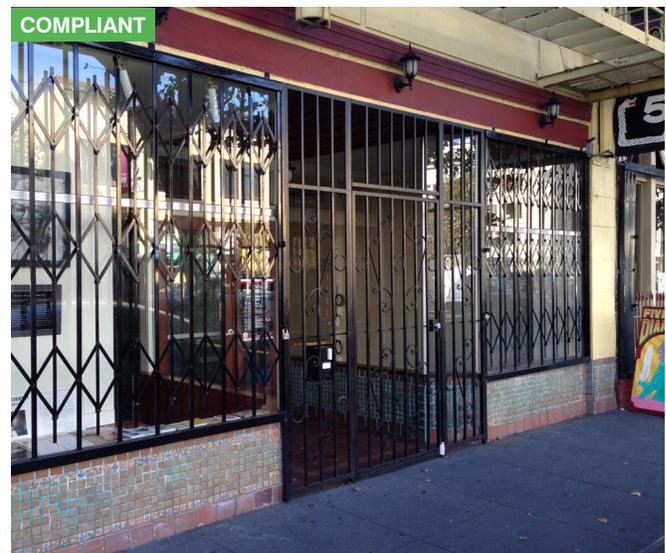
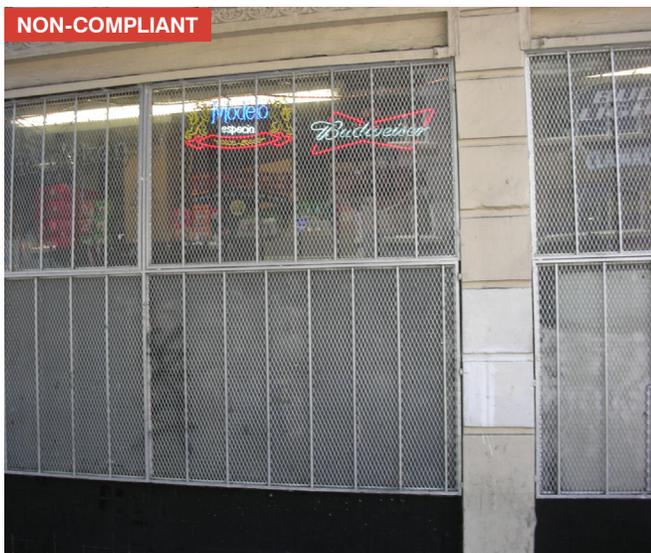
<sup>2</sup> Window signs that are affixed or adhered directly to the window glass do not require a sign permit. All other business signs must have a sign permit or they are illegal and must be removed.

# What This Means for Every Store

Every merchant and store owner should be sure that their storefront is in full compliance with the Planning Code. Below are the five most common violations to look for.



1) Windows that have been covered over with boards, film, or paint must be restored to transparency.



2) Security gates or grillwork on the inside or outside of the window glass must be primarily transparent (at least 75% open to perpendicular view).



3) Shelving, display cases, appliances and other items placed within four feet of the window glass must be no taller than four feet or be primarily transparent (at least 75% open to perpendicular view).



4) All exterior signs must have a sign permit or must be removed.

5) Business signs affixed to the window (painted or adhered to the glass) can be no larger than one-third the size of the window in which they are placed.

# Frequently Asked Questions

## If my building does not have 60% of its ground floor façade fenestrated with windows and doors do I have to add them?

If your building was legally built with less than the current 60% required fenestration, it is “grandfathered in,” which means it is legally non-complying with regard to the fenestration. In that case all of the existing storefront windows (up to the 60% standard) must be transparent and provide visibility to the inside.

## If my windows have been covered over for several years, aren't they also grandfathered in?

Unless the windows were covered over with a lawfully issued building permit they are not grandfathered in and you must restore them to comply with the storefront transparency requirement.

## If I have a display case within four feet of the window that is filled with products for sale, do I have to reduce the number of products on display so that it is 75 percent open?

Only the display furniture and equipment (when empty) must be 75 % open to view for any portion higher than four feet. Products used in sales or service within a display are not restricted.

## Do I need a building permit to rearrange my store to comply?

In most cases you do not need a building permit to simply rearrange or replace display furniture, but

you should check with the Department of Building Inspection at 415-558-6088 to be sure.

## What if I don't comply?

Until you fully comply with the transparency requirement, you may be subject to enforcement action. In that case there could be a hold on all permit activity for the property ultimately resulting in penalties accruing at a rate of up to \$250 per day.

## Are there any additional requirements for historic properties?

Display fixtures may require a greater setback and area than the minimum “visibility zone” defined in this document. You may also be required to provide more than the minimum 60 percent transparency for windows along the ground- and second-floor street frontage. Please consult with a Department Preservation Planner at the Planning Information Center for additional guidance

## What assistance is available?

The Office of Economic and Workforce Development has numerous technical and financial assistance programs available to help small businesses that are pursuing improvements to their business. For more information, see OEWD's web site:

<http://oewd.org/Neighborhood-Grants-Loans.aspx>



SAN FRANCISCO  
PLANNING  
DEPARTMENT

### FOR MORE INFORMATION: Call or visit the San Francisco Planning Department

#### Central Reception

1650 Mission Street, Suite 400  
San Francisco CA 94103-2479

TEL: **415.558.6378**  
FAX: **415.558.6409**  
WEB: <http://www.sfplanning.org>

#### Planning Information Center (PIC)

1660 Mission Street, First Floor  
San Francisco CA 94103-2479

TEL: **415.558.6377**

*Planning staff are available by phone and at the PIC counter.  
No appointment is necessary.*



Exhibit H

Existing Green Zone &  
Expansion Potential

Legend

-  Existing Green Zone
-  Potential Green Zone Expansion Area\*

\*Includes all non-residential zoning districts with a 600 foot buffer around schools.

